DE: 4410-11

DEPARTMENT OF JUSTICE
Antitrust Division

***United States v. ASSA ABLOY AB, et al.*; Proposed Final Judgment and Competitive Impact Statement**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Asset Preservation Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America v. ASSA ABLOY AB, et al.*, Civil Action No. 22-2791-ACR. On September 15, 2022, the United States filed a Complaint alleging that ASSA ABLOY AB's proposed acquisition of the Hardware and Home Improvement division of Spectrum Brands Holdings, Inc. would violate section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed on May 5, 2023, requires ASSA ABLOY to divest its EMTEK-branded business, its Schaub-branded business, its August-branded business, and its Yale-branded multifamily and residential smart lock business in the United States and Canada. It also requires ASSA ABLOY and Spectrum Brands to submit to oversight by a monitoring trustee, who will have the power and authority to monitor ASSA ABLOY's and Spectrum Brands' compliance with the Asset Preservation Stipulation and Order and proposed Final Judgment.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at http://www.justice.gov/atr and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances,

published in the *Federal Register*. Comments should be submitted in English and directed to Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530 (email address: ATRJudgmentCompliance@usdoj.gov).

Suzanne Morris,
Deputy Director Civil Enforcement Operations,
Antitrust Division.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
U.S. Department of Justice
Antitrust Division
450 Fifth Street, N.W., Suite 8700
Washington, DC 20530,

Plaintiff,

v.

ASSA ABLOY AB
Klarabergsviadukten 90
Stockholm, Sweden SE-111 64

and

SPECTRUM BRANDS HOLDINGS, INC.
3001 Deming Way
Middleton, WI 53562,

Defendants.

COMPLAINT

The United States brings this antitrust lawsuit to stop Defendant ASSA ABLOY AB ("ASSA ABLOY") from acquiring a division of Defendant Spectrum Brands Holdings, Inc. ("Spectrum")—ASSA ABLOY's largest competitor in supplying the $2.4 billion residential door hardware industry in the United States. Foreshadowing the anticompetitive effects of the proposed transaction, ASSA ABLOY internally predicted that, as a result of the transaction, one of its residential door hardware brands would be "in a better pricing negotiation position and can expect to increase prices."

The Defendants are close head-to-head competitors whose rivalry has benefitted consumers and who are part of a trio that today dominates the concentrated U.S. residential door hardware industry. But this entrenched position was not enough for ASSA ABLOY, whose CEO insisted just last year that the company "ha[s] to make sure

we stop or buy" competitors before they "can grow." For ASSA ABLOY, which has a long history of buying firms in the industry, purchasing Spectrum's Hardware and Home Improvement division ("Spectrum HHI") is the latest step in its attempts to advance the trend toward concentration in the residential door hardware industry.

The proposed transaction, which would leave American consumers with only two significant producers of residential door hardware, violates the Clayton Act in at least two separate antitrust markets in the United States: (1) premium mechanical door hardware and (2) smart locks, which are wirelessly connected digital door locks. In the premium mechanical door hardware market, the proposed transaction would be a merger to near-monopoly, where the merged firm would account for around 65% of sales, becoming more than ten times larger than its next-largest competitor. In the market for smart locks, the proposed transaction would cut off competition in a fast-growing door hardware segment, leaving the merged firm with more than a 50% share and only one remaining meaningful competitor—an effective duopoly. In both of these relevant markets, the proposed transaction easily surpasses the thresholds that trigger a presumptive violation of the Clayton Act.

Historically, competition between Defendants to sell residential door hardware to showrooms, home improvement stores, builders, online retailers, home security companies, and other customers has generated lower prices, higher quality, exciting innovations, and superior customer service. As outlined in detail below, the head-to-head competition between the Defendants is significant. They regularly reduce price to win business from each other and respond to each other's competitive initiatives with innovation and better offerings. For example, one of Spectrum's top "strategic imperatives" in 2021 was to invest heavily in better service and pricing for its premium mechanical door hardware brands (Baldwin Estate and Baldwin Reserve) in order to recapture market share from its "chief competitor," ASSA ABLOY's EMTEK brand.

Similarly, ASSA ABLOY has recently invested in a new lineup of smart locks designed to "take [a half] bay" (*i.e.*, take shelf space) from Spectrum's Kwikset brand and its other large competitor in major home improvement stores. The proposed transaction would eliminate those benefits altogether.

Acknowledging the harm that their proposed transaction would cause to competition, the Defendants have offered to sell off selected portions of ASSA ABLOY's globally integrated business. But offering a complex divestiture of carved-out assets from a globally-integrated business in an attempt to remedy a deal that presents a massive competitive problem would leave American consumers to bear the significant risks that the divestiture would fail to preserve the intensity of existing competition. Regardless of who the unknown buyer turns out to be, such a hazardous corporate restructuring would be inadequate to remedy the harms of Defendants' anticompetitive deal. The only remedy that will preserve competition is to stop the proposed transaction outright. Therefore, the United States of America brings this lawsuit to enjoin ASSA ABLOY's proposed acquisition of Spectrum HHI because it violates Section 7 of the Clayton Act, 15 U.S.C. § 18. The United States alleges as follows:

INTRODUCTION

1. American homeowners and renters routinely rely on residential door hardware to meet their most basic privacy and security needs. Because virtually every door in every home in the United States has door hardware on it, about $2.4 billion of residential door hardware is sold in the United States each year.

2. The residential door hardware industry in the United States is concentrated. Spectrum, which owns the Baldwin and Kwikset brands, and ASSA ABLOY, which owns the August, EMTEK, and Yale brands, are, after many years of competition, the largest and third-largest producers of residential door hardware in the United States, collectively accounting for more than half of sales. Together with the

other major supplier, the three largest producers account for about 75% of sales, with the remaining sales attributed to much smaller players.

3. In September 2021, ASSA ABLOY agreed to pay $4.3 billion to acquire Spectrum HHI. If consummated, this transaction would eliminate important head-to-head competition and move the residential door hardware industry ever closer toward monopoly.

4. While the transaction would further consolidate the entire residential door hardware industry, its harm would likely be felt most acutely by customers seeking to purchase two distinct categories of residential door hardware: (1) premium mechanical door hardware and (2) smart locks. Head-to-head competition between Defendants has made these products more responsive to the changing economic, aesthetic, technological, and security demands of American households—lowering prices, fostering innovation, increasing the variety and quality of offerings, and improving customer service. The proposed transaction would end that important competition and deprive American consumers of the benefits of such competition in the future.

5. In premium mechanical door hardware, Defendants are by far the two largest producers and closest rivals in the United States through ASSA ABLOY'S EMTEK brand and Spectrum HHI's Baldwin Estate and Baldwin Reserve brands. Based on information gathered thus far, the Defendants collectively accounted for approximately 65% of sales in 2021. The Defendants are strong and regular competitors in this market, as the market shares would suggest and the Defendants' own documents indicate.

6. In smart locks, Defendants are the two largest producers in the United States, primarily through ASSA ABLOY's August and Yale brands and Spectrum HHI's Kwikset brand. Based on information gathered thus far, they collectively accounted for about 50% of sales in 2021. Defendants have both invested significantly in efforts to win

smart lock market share from each other, making them two of the three dominant incumbents in the growing smart lock market that have scale, resources, and access to distribution that dwarf all other competitors. The proposed transaction would consolidate the smart lock market into a duopoly.

7. ASSA ABLOY and Spectrum were keenly aware that their proposed deal presented serious anticompetitive issues as they negotiated which firm would bear the risk of inevitable objections from antitrust enforcers. Spectrum insisted that ASSA ABLOY commit in the purchase agreement to divest assets to try to secure antitrust clearance, but ASSA ABLOY executives were reluctant to make a divestiture commitment because they worried it would "put [their] future at risk." In September 2021, only four days before the transaction was announced, Spectrum's CEO tried to assuage ASSA ABLOY's concerns, suggesting it could have its cake and eat it too—appease antitrust enforcers with a divestiture commitment structured in a way "where you don't put the assets you want at risk."

8. Defendants put that strategy into action in the summer of 2022, when they proposed to divest, to an as-yet unidentified buyer, portions of ASSA ABLOY business units that make and sell residential door hardware in the United States. But divesting carved-out assets from the globally integrated business apparatus that made them successful cannot be relied upon to replicate the intensity of competition that exists today between ASSA ABLOY and Spectrum HHI and therefore would be an unacceptable remedy.

9. The proposed transaction violates Section 7 of the Clayton Act, 15 U.S.C. § 18, and should be enjoined.

DEFENDANTS AND THE PROPOSED TRANSACTION

10. ASSA ABLOY is a publicly traded Swedish stock company headquartered in Stockholm, Sweden. It is a globally integrated conglomerate that manufactures and

sells a wide array of access solutions products—including residential and commercial door hardware, doors, and electronic access control systems. ASSA ABLOY sells residential door hardware in the United States under the August, EMTEK, Sure-Loc, Valli & Valli, and Yale brands. Yale, in particular, is an iconic "master brand," dating back more than 150 years, which "has strong recognition in residential markets worldwide." ASSA ABLOY is the third largest producer of residential door hardware in the United States (including premium mechanical door hardware and smart locks), as well as the largest producer of commercial door hardware in the United States. In 2021, ASSA ABLOY earned revenues of approximately $3.5 billion in the United States and approximately $9.1 billion worldwide.

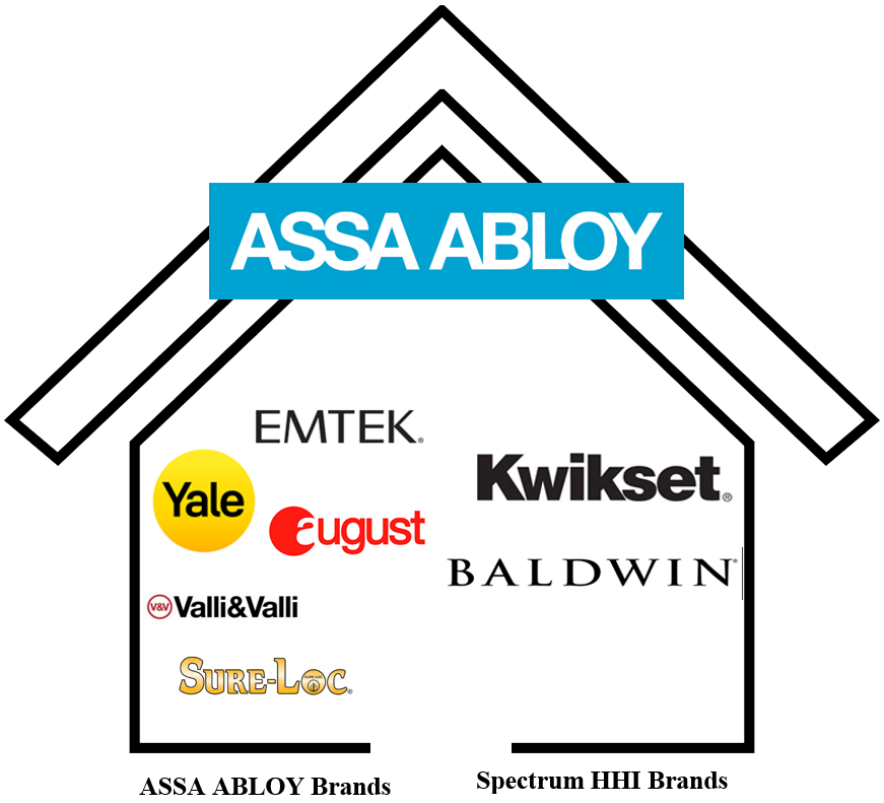
11. ASSA ABLOY is a creature of corporate consolidation. It was established in 1994 through the merger of Swedish lock maker ASSA AB and Finnish lock maker Abloy Oy. Since then, ASSA ABLOY has been on a decades-long acquisitions spree—buying more than 300 businesses in 27 years, including all of the companies that now constitute ASSA ABLOY's multi-billion-dollar residential door hardware business. It acquired Yale in 1999, EMTEK in 2000, Valli & Valli in 2008, August in 2017, and Sure-Loc in 2021. It also acquired South Korean smart-lock manufacturer iRevo in 2007 and Chinese smart-lock manufacturer Digi in 2014. These acquisitions and others by ASSA ABLOY have increased concentration in the door hardware industry.

12. Spectrum is a publicly-traded Delaware corporation headquartered in Middleton, Wisconsin. It is a diversified, global branded consumer products company with four divisions: (1) Home and Personal Care, (2) Global Pet Care, (3) Home and Garden, and (4) Hardware and Home Improvement. In 2021, Spectrum earned revenues of approximately $3.2 billion in the United States and approximately $4.6 billion worldwide.

13. Spectrum's Hardware and Home Improvement division, referred to herein as "Spectrum HHI," is headquartered in Lake Forest, California. It is the largest producer of residential door hardware in the United States, and it also manufactures and sells commercial door hardware, residential plumbing hardware (*e.g.*, kitchen and bathroom faucets), and builders' hardware. Spectrum HHI sells residential door hardware, including premium mechanical door hardware and smart locks, in the United States under the Baldwin Estate, Baldwin Reserve, Baldwin Prestige, and Kwikset brands, and it also manufactures private-label residential door hardware for third parties. In 2021, Spectrum HHI earned revenues of approximately $1.4 billion in the United States.

14. Spectrum HHI is also the result of decades of consolidation in the residential door hardware industry. Black & Decker (renamed Stanley Black & Decker in 2010) acquired Kwikset in 1989, Baldwin and Weiser (a Canadian residential door hardware company) in 2003, and Taiwanese door-lock manufacturer Tong Lung Metal in 2012, before selling all four companies to Spectrum in 2012 and 2013.

Defendants' Residential Door Hardware Brands Sold in the United States



15. On September 8, 2021, ASSA ABLOY and Spectrum signed an asset and stock purchase agreement under which ASSA ABLOY would acquire Spectrum HHI for approximately $4.3 billion. The post-transaction ASSA ABLOY would be an industry behemoth, with almost $5 billion in annual sales in the United States alone, and it would become the largest producer of residential door hardware in the United States, in addition to already being the largest producer of commercial door hardware in the United States.

INDUSTRY BACKGROUND

16. The proposed transaction involves products—residential door hardware—that Americans use every day to enter, leave, and secure their homes and interior living spaces, such as bedrooms, bathrooms, and home offices.

17. Doors used in a residence are almost always hinged or sliding (*e.g.*, pocket doors). Residential door hardware is the hardware affixed to a residential hinged or sliding door that is used to open, close, or lock the door.

18. Residential door hardware is either (1) mechanical, meaning that it functions only by physical operation at the door (*e.g.*, physically turning a handle or knob and, for exterior doors, using a key), or (2) digital, meaning that it can be operated electronically and, in some cases, remotely.

A. Mechanical Residential Door Hardware

19. Mechanical residential door hardware has interior components (the "chassis") and exterior components (the "trim"). The chassis consists of a latching or locking mechanism and other components. Trim consists of hardware used to operate the latching or locking mechanism—most commonly a knob or lever for the latch and a mechanical turn piece for the lock—and surrounding pieces of decorative hardware. Chassis and trim for residential door hardware are usually purchased together as a set, known as a lock set, but they can also sometimes be purchased separately. The locking

mechanism (*e.g.*, deadbolt) is the most common element of a lock set to be purchased separately.

20. Mechanical residential lock sets are sold in a wide variety of functions, hardware types, designs, price points, and materials. Exterior lock sets have a locking function, but many interior lock sets do not. Interior lock sets usually serve one of three different functions: "passage" (turn and latch from both sides, no lock), "privacy" (turn and latch from both sides, lock with privacy button from inside), or "dummy" (no turn, latch, or lock). Exterior lock sets serve what is known as an "entrance" function (turn and latch from both sides, keyed locking on exterior, turn-piece locking from interior).

21. Mechanical residential door hardware is sold at retail in the United States through several different channels. Entry level and medium-grade hardware is primarily sold in mass-market retail stores, such as "big box" home improvement stores and hardware stores. Premium mechanical door hardware, by contrast, is sold primarily through specialized dealers, such as decorative hardware showrooms. Mechanical residential door hardware is also sold through e-commerce websites, such as Build.com and the websites of brick-and-mortar retailers.

Examples of Premium Mechanical Door Hardware

EMTEK (ASSA ABLOY) Lock Set

Baldwin Estate (Spectrum) Entry Set

22. Door hardware used on residences differs in many ways from door hardware used in commercial settings. Residential door hardware is less complex, less costly, and less durable than commercial door hardware. Commercial door hardware also includes several product categories that have no residential analogue, including door closers, exit devices, and electronic access control hardware.

B. Digital Residential Door Hardware

23. Most residential door hardware and essentially all interior residential door hardware is mechanical, but certain American consumers are increasingly selecting exterior residential door hardware that is digital.

24. The primary type of digital door hardware used in a residential setting is a digital door lock, which is a deadbolt that is operated electronically. One type of digital door locks, referred to herein as "smart locks," can be operated and/or monitored through a wireless connection to another electronic device. The other type of digital door locks ("non-connected locks") have no wireless connection and are electronically operated via a device physically connected to the deadbolt, such as an electronic keypad. Some digital door locks are sold as a lock set that includes mechanical trim, such as a knob or lever.

Examples of the Two Types of Digital Door Locks

August (ASSA ABLOY)
Wi-Fi Smart Lock and App

Kwikset (Spectrum)
Non-Connected Keypad Door Lock

25. Smart locks make a wireless connection to another device through a variety of technology protocols, primarily including Wi-Fi, Bluetooth, and low-power

mesh-network protocols (*e.g.*, Z-Wave, Zigbee, or Thread). The user typically operates the lock from an application on a smart phone or similar device.

26. In the United States, smart locks make up a growing share of residential digital door lock sales and residential door hardware sales generally. In 2021, smart locks accounted for about two-thirds of residential digital door locks sold in the United States, and smart lock sales in the United States have approximately doubled in only three years, growing to more than $420 million in 2021.

27. Digital door locks, including smart locks, are sold at retail in the United States through several different channels, primarily including mass-market retail stores, such as big box home improvement stores, and e-commerce websites, such as Amazon.com. Smart locks are also sold through consumer electronics stores and specialized dealers, such as home security companies and home technology integrators.

C. The Residential Door Hardware Industry in the United States

28. In the United States, about 75% of all residential door hardware sold each year is made by ASSA ABLOY, Spectrum, and their largest competitor. Each of these companies offers a full portfolio of residential door hardware products through multiple brands, including both mechanical and digital door hardware that spans a wide range of product features and price points. The remaining approximately 25% of residential door hardware sold in the United States is made by a large assortment of much smaller door hardware producers. Unlike the three dominant firms, each of these smaller producers usually sells residential door hardware under a single brand and specializes in one or two segments of residential door hardware.

29. Defendants' residential door hardware brands sold in the United States are as follows:

Product	ASSA ABLOY Brand(s)	Spectrum Brand(s)
Premium Mechanical Door Hardware	EMTEK Valli & Valli	Baldwin Estate Baldwin Reserve
Smart Locks	Yale August	Kwikset
Non-Connected Digital Door Locks	Yale	Kwikset
Non-Premium Mechanical Door Hardware	Yale Sure-Loc	Baldwin Prestige Kwikset

30. Residential door hardware producers, including Defendants, distribute their products to retailers directly or through wholesale distributors. Producers only rarely sell residential door hardware directly to end-customers.

31. Residential door hardware end-customers include homeowners, who may purchase a single lock set, and landlords, general contractors, and residential builders, who may purchase hundreds or thousands of different pieces of door hardware in a variety of styles and functions to outfit every type of door in a residential development.

RELEVANT MARKETS

A. Product Markets

32. Each of the products described below constitutes a line of commerce, as that term is used in Section 7 of the Clayton Act, and each of those is a relevant product market in which the potential competitive effects of this proposed transaction can be assessed within the context of the broader marketplace for residential door hardware.

1. Premium Mechanical Door Hardware

33. Premium mechanical door hardware is residential door hardware made of high-quality, durable metals (primarily forged brass and cast bronze), and is highly customizable, design-driven, and constructed with superior craftsmanship. Such hardware is also offered in a wide variety of styles, designs, and finishes. These peculiar characteristics create a look and feel to the hardware that is distinct from other mechanical door hardware and connotes quality, style, and luxury. For example,

Spectrum's Baldwin Reserve and Baldwin Estate brands position their door hardware as "door couture," and ASSA ABLOY's EMTEK brand "present[s] more like a fashion house than [a] hardware company." Accordingly, these distinguishing features also command distinct price points that are significantly higher than other types of mechanical door hardware—on average, premium mechanical door hardware is about twice as expensive as its non-premium analogues. More than $260 million of premium mechanical door hardware was sold in the United States in 2021.

34. Premium mechanical door hardware, unlike other mechanical door hardware, is sold primarily through specialized dealers, such as decorative hardware showrooms, door and window shops, and building-supply retailers known as "lumberyards." Premium mechanical door hardware is not sold through mass-market retailers, such as "big box" home improvement stores. The specialized dealers that sell premium mechanical door hardware typically offer high levels of customer service, including in-store displays that exhibit the hardware's customizability and craftsmanship and sales personnel skilled in designing and ordering hardware to exacting standards. These dealers also cater to a distinct group of premium clientele—typically, discerning homeowners with significant disposable income—and do not offer or offer only a limited selection of non-premium mechanical door hardware. Intermediaries, such as interior designers, are sometimes also involved in selecting and ordering premium mechanical door hardware.

Example of EMTEK and Baldwin Reserve In-Store Displays

35. Brands of premium mechanical door hardware are recognized by customers and industry participants as "premium" or "luxury" producers. The largest and most well-known of these brands are owned by Defendants: EMTEK (ASSA ABLOY), Baldwin Reserve (Spectrum), and Baldwin Estate (Spectrum). These three brands collectively account for approximately two-thirds of the sales of premium mechanical door hardware in the United States. ASSA ABLOY also owns Valli & Valli, which is a smaller premium mechanical door hardware brand sold in the United States. Defendants use, among other things, high price points, premium product features, distribution through specialized retailers, and marketing to distinguish these brands from their other, non-premium mechanical door hardware brands, such as Kwikset, Yale, and Sure-Loc. There are premium mechanical door hardware brands not owned by Defendants, but none of them accounts for more than 6% of sales in the United States, and most of them account for 2% or less.

36. Producers of premium mechanical door hardware in the United States, including ASSA ABLOY and Spectrum HHI, offer a core lineup of product categories that correspond to the lineup of locks and lock sets needed to fully outfit a home. These core categories of premium mechanical door hardware include entrance lock sets (also called "entry sets"), interior knob and lever lock sets (*i.e.*, passage, privacy, and dummy functions), and deadbolts. Other makers of premium mechanical door hardware, including ASSA ABLOY and Spectrum HHI, also sell one or more categories of premium mechanical sliding door hardware (*e.g.*, pocket-door hardware).

37. Even when products are not necessarily substitutes for one another (*e.g.*, entry sets and passage sets), products sold under similar competitive conditions may be aggregated for analytical convenience. While not necessarily substitutes for one another, the various categories of premium mechanical door hardware (passage sets, privacy sets, dummy sets, entry sets, deadbolts, pocket door hardware, and barn door hardware) are sold under similar competitive conditions and thus may be grouped together for analytical purposes.

38. Premium mechanical door hardware constitutes a relevant product market. Premium mechanical door hardware satisfies the well-accepted "hypothetical monopolist" test set forth in the U.S. Department of Justice's and Federal Trade Commission's Horizontal Merger Guidelines ("Merger Guidelines"). A hypothetical monopolist of premium mechanical door hardware would find it profitable to impose a small but significant and non-transitory increase in price on such products because relatively few purchasers would substitute away to other types of door hardware in response to such a price increase. Because other types of door hardware (*e.g.*, commercial door hardware and non-premium mechanical door hardware) do not offer quality, aesthetics, or customization that is comparable to premium mechanical door

hardware, customers desiring these product features have no reasonable substitutes for premium mechanical door hardware.

39. As alleged above, premium mechanical door hardware also exhibits virtually all of the "practical indicia" that courts use to identify relevant antitrust product markets: industry or public recognition, peculiar characteristics and uses, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors.[1]

2. Smart Locks

40. Smart locks use wireless connections to allow the user to lock and unlock the door without using a key or physically operating the door hardware. That wireless connection also allows the user to operate and monitor the smart lock remotely and integrate the lock into a broader home security or "smart home" ecosystem, such as Amazon Alexa, Apple HomeKit, or Google Home. The physical range of remote operation varies by wireless protocol and degree of integration, but the physical range of shorter-range wireless protocols, such as Bluetooth, can also be extended through the use of a Wi-Fi hub, which most smart lock producers offer as part of a bundle with the smart lock or separately. The additional technology (hardware and software) incorporated into smart locks also corresponds to significantly higher price points than other kinds of digital door locks that lack this technology—on average, smart locks are about twice as expensive as non-connected locks. More than $420 million of smart locks were sold in the United States in 2021.

41. Industry participants and consumers recognize that smart locks are distinct from mechanical door hardware and non-connected digital door locks. Smart locks also offer technological functionality that mechanical door hardware cannot offer: the ability to lock and unlock a door without a physical key, the ability to monitor and operate a lock remotely, and the ability to integrate a lock into a smart home ecosystem or home

[1] *See Brown Shoe Co. v. United States*, 370 U.S. 294, 325 (1962).

security system. The latter two technological functions (remote operation/monitoring and integration) also distinguish smart locks from non-connected digital door locks and are sought by a distinct set of technologically savvy customers who value security, convenience, and connectivity. Accordingly, neither mechanical door hardware nor non-connected locks are reasonable substitutes for smart locks. Likewise, commercial door hardware is not a reasonable substitute for smart locks for the reasons alleged above. Additionally, smart locks are sold through a variety of channels, but, unlike other types of residential door hardware, smart locks are also sold through firms that specialize in consumer electronics and home security technology, including especially consumer electronics retailers, home security companies, and smart home companies.

42. Smart locks constitute a relevant product market. Smart locks satisfy the well-accepted hypothetical monopolist test set forth in the Merger Guidelines. A hypothetical monopolist of smart locks would find it profitable to impose a small but significant and non-transitory increase in price on such products because relatively few purchasers would substitute away to other types of door hardware in response to such a price increase. As alleged above, smart locks also exhibit virtually all of the "practical indicia" that courts use to identify relevant antitrust product markets: industry or public recognition, peculiar characteristics and uses, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors.[2]

B. Geographic Market

43. The United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act for the product markets alleged herein. Defendants have agreed that the relevant geographic market is no broader than the United States. Moreover, prices for premium mechanical door hardware and smart locks are set in the

[2] *See id.*

United States, independent of pricing elsewhere, and residential door hardware sold outside the United States is often not compatible with doors used in the United States.

ANTICOMPETITIVE EFFECTS

44. The proposed transaction would eliminate competition between ASSA ABLOY and Spectrum HHI and significantly consolidate already concentrated markets. Freed from having to compete against its largest rival in the markets for premium mechanical door hardware and smart locks, ASSA ABLOY would acquire not only Spectrum HHI but also the opportunity to profit by, among other things, raising prices, reducing product quality, reducing investments in innovation, and reducing levels of service. The proposed transaction would also increase the likelihood of coordination.

A. The Proposed Transaction Is Presumptively Unlawful

45. The more that a proposed transaction would increase concentration in a market, the more likely it is that the proposed transaction may substantially lessen competition, as prohibited by the Clayton Act. Mergers that significantly increase concentration in already concentrated markets are presumptively anticompetitive and therefore presumptively unlawful. As the Supreme Court held, any transaction resulting in "a firm controlling an undue percentage share of the relevant market," including a firm that would "control[] at least 30%" of the market, and "a significant increase in the concentration of firms in that market is so inherently likely to lessen competition substantially that it must be enjoined."[3] For such transactions, including ASSA ABLOY's proposed acquisition of Spectrum HHI, their "size makes them inherently suspect in light of Congress' design in [Clayton Act Section 7] to prevent undue concentration."[4] Thus, such transactions are entitled to a presumption of illegality under Supreme Court precedent.

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[3] *United States v. Phila. Nat'l Bank*, 374 U.S. 321, 363 (1963).

[4] *Id*.

46. The Herfindahl-Hirschman Index ("HHI") is a measure of market concentration widely accepted by economists and courts in evaluating the level of competitive vigor in a market and the likely competitive effects of an acquisition. HHI values (or "points") are calculated by summing the squares of the individual firms' market shares. Accordingly, HHI values range from 0 in markets with no concentration to 10,000 in markets where one firm has a 100% market share. As recognized in the Merger Guidelines, if the post-transaction HHI would be more than 2,500, and the transaction would increase the HHI by more than 200 points, then the transaction would result in a highly concentrated market, and the transaction is presumed likely to enhance market power and substantially lessen competition.

47. The proposed transaction is presumptively unlawful under the Merger Guidelines as well because it would significantly increase concentration in at least two markets that would be highly concentrated post-transaction:

Market	Post-Merger HHI	HHI Increase	Combined Share
Premium Mechanical Door Hardware	> 4,000	> 1,600	~65%
Smart Locks	> 3,000	> 1,200	~50%

48. So large and expansive are Defendants' businesses and so concentrated is the residential door hardware industry already, that the proposed transaction would also be presumptively unlawful under multiple alternative definitions of the relevant product market, including a product market as broad as all residential door hardware in the United States. In such a market, for example, the proposed transaction would increase the HHI by more than 500 points and would result in an HHI of more than 3,000.

B. The Proposed Transaction Would Eliminate Head-to-Head Competition Between ASSA ABLOY and Spectrum HHI

49. ASSA ABLOY and Spectrum HHI have competed vigorously for years to be leaders in the United States markets for premium mechanical door hardware and for

smart locks. That competition has yielded tangible benefits for American consumers, primarily including lower prices, new and better products, and improved customer service. The proposed transaction would eliminate Defendants' important competition with each other, to the detriment of consumers.

1. Premium Mechanical Door Hardware

50. ASSA ABLOY and Spectrum HHI acknowledge internally that their EMTEK, Baldwin Reserve, and Baldwin Estate brands are each other's "chief," "main," "primary," "major," "biggest," and "closest" competitor. EMTEK (ASSA ABLOY) is the "market leader in premium residential door hardware," accounting for about 45% of all sales in the United States. Baldwin Reserve and Baldwin Estate (Spectrum) are collectively several times larger than their next largest competitor and account for about 20% of sales of premium mechanical door hardware in the United States.

51. Baldwin's importance as a competitor to EMTEK and the benefits that competition has for consumers also became apparent when Baldwin had some struggles. For example, in 2021, a Baldwin sales manager internally assessed that EMTEK had been able "to almost recklessly take more price" (*i.e.*, impose price increases) because Baldwin, EMTEK's "biggest competitor," had "fallen down," meaning it had fallen short as a competitor.

52. EMTEK displaced Baldwin as the premium market leader several years ago. But Spectrum HHI has made it a top "strategic imperative[]" to take steps to "reaffirm Baldwin as the luxury door hardware leader." The thrust of Spectrum's Baldwin strategy is to invest **[REDACTED]** dollars over a multi-year period to improve, among other things, Baldwin's pricing, customer service, and products in order specifically to "[r]ecapture the leadership position in luxury door hardware from chief competitor Emtek."

53. The head-to-head rivalry between EMTEK and Baldwin to achieve "leader" status in the premium mechanical door hardware market has been a boon to American consumers in areas including better prices, service, and products.

a. **Lower Prices**

54. EMTEK, Baldwin Reserve, and Baldwin Estate regularly offer special discounts to their customers to win business from the other or to keep a customer from switching to the other.

55. For example, EMTEK regularly has provided additional discounts to win business away from Baldwin or prevent an EMTEK customer from switching to Baldwin. EMTEK offers additional discounts **[REDACTED]**, and has instructed its salespeople that they **[REDACTED]**.

56. Baldwin Reserve and Baldwin Estate also offer customers special discounts to compete against EMTEK. Between January 2017 and March 2022, more than **[REDACTED]** of Baldwin's requests for special discounts that mentioned a competitor referenced competition from EMTEK as the reason for Baldwin's price concession—far more than any other competitor. The narratives associated with these "price change requests" illuminate how aggressively Baldwin and EMTEK compete on the basis of price. To take one example, in 2021, Baldwin offered an unusually deep discount on "high end custom[]" door hardware from both the Baldwin Reserve and Baldwin Estate brands to a residential architecture firm that was building several single-family homes; Baldwin did so "to keep Emtek OUT!" and win **[REDACTED]** of dollars in new sales to the customer.

57. In addition to price-change-request discounts, Baldwin also offered targeted additional discounts on its Baldwin Reserve brand in 2021 as part of a broader effort to "attack an Emtek stronghold" with lumberyard and door and window shop customers, which resell premium mechanical door hardware to end-customers. The

Baldwin Reserve brand had been "launched to attack" EMTEK's "beachhead" among these customers in 2011, but by 2021 it had not yet been able to make sufficient headway. Accordingly, Baldwin took several measures to "get back on track" with these customers, including offering "more aggressive" discounts to EMTEK customers in an effort to get them to switch to Baldwin.

58. Competition between Defendants' premium mechanical door hardware brands also constrains increases to list prices, which are published prices used as reference points for discounts. For example, in 2019, Spectrum HHI senior executives proposed raising the list prices of Baldwin Reserve and Baldwin Estate by **[REDACTED]**, but acknowledged that they would first "need to understand Emtek's recent price increase." Baldwin's director of sales responded that raising Baldwin prices by **[REDACTED]** would be "insane" because EMTEK had raised prices by only **[REDACTED]**, making a **[REDACTED]** price increase "the max" Baldwin could pursue while "still be[ing] competitive."

b. Better Customer Service

59. Competition between EMTEK and Baldwin pushes the two to offer customers better levels of service, primarily in the form of faster order fulfillment (or "lead times") and provision of complimentary in-store displays.

60. Lead times are an important facet of competition in the premium mechanical door hardware market because customers value speedy order fulfillment. EMTEK, in particular, prides itself on having "the shortest lead times in the industry," which it often credits for allowing it to win business away from competitors, including specifically from Baldwin. For example, an EMTEK sales director wrote in July 2020 that he "believe[d] a large part of [EMTEK's] demand increase is as a result of our short lead times," noting specifically that those lead times empowered EMTEK to refuse discounts to customers that had no other option but EMTEK: "We are being careful not

to respond to last minute price discount requests for product that cannot be sourced from another supplier within an acceptable lead time." EMTEK similarly observed in September 2020 that one of its "Top 3 Result Drivers" was that its short lead times were "allowing share grab" because "[c]ompetitors have long lead times."

61. Baldwin has made investments to improve its lead times to compete better against EMTEK, which has benefited consumers. Most recently, as part of its broader strategic imperative, beginning in 2021, to "recapture the leadership position" from EMTEK, Baldwin invested heavily to shorten its lead times to match EMTEK's. It did so through its "Quick Ship" program, the crux of which is to shorten lead times by stocking more inventory, which in turn is intended to "remove Emtek['s] lead time advantage" and "[r]ebuild showroom loyalty and brand preference."

62. The use of complimentary in-store displays is another facet of competition between EMTEK and Baldwin because such displays are an important sales aid for showrooms and similar dealers. Because in-store displays help dealers sell door hardware and would otherwise be a substantial cost to the dealer (hundreds or thousands of dollars per display), giving away displays is a way for producers to curry favor with dealers. That favor can help to displace competitors by securing better real estate on the showroom floor and earning elevated status as a "preferred" or "priority" brand at the dealer.

63. Accordingly, to compete against each other, EMTEK and Baldwin give away showroom displays, which benefits consumers. EMTEK especially focuses on providing dealers with free in-store displays, which is one of its "key strategies." Baldwin spends substantial sums each year providing free in-store displays in "tiers" based on the dealer's estimated annual sales volume. Baldwin also uses free displays to target EMTEK. In 2021, it made a concerted effort to provide free displays to

lumberyard and door and window shop customers, and it reserved the largest and most expensive free displays for the dealers "that have a large Emtek presence."

d. New Products, Styles, and Finishes

64. Because aesthetics, customization, and expansive optionality are distinguishing features of premium mechanical door hardware, it is important for producers to continuously respond to design trends by offering new products, styles, and finishes. EMTEK has been known for years as a new product introduction "machine," and Baldwin has likewise sought for years to increase the speed and quantity of its new product introductions to compete better against EMTEK. The resulting increase in product options has benefitted consumers.

65. If the proposed transaction were to proceed, the merged firm would likely reduce options available to consumers in the premium mechanical door hardware market, including potentially curtailing the introduction of new product lines or even eliminating entire brands or product lines. Immediately after the proposed transaction was publicly announced, Spectrum HHI sales personnel internally anticipated that the merged firm would "[p]ut a bullet in [Baldwin] Reserve" and "fold Emtek on the high end," meaning eliminate more expensive EMTEK product lines, such as door hardware for mortise locks. That prediction contrasted sharply with Baldwin's pre-merger strategy to expand its product offerings in order to compete better against EMTEK.

2. Smart Locks

66. ASSA ABLOY's August and Yale brands and Spectrum HHI's Kwikset brand are "top competitors" of one another in the market for smart locks in the United States, in which ASSA ABLOY and Spectrum HHI are two of three dominant incumbents. Head-to-head competition between these brands has resulted in lower prices and new and innovative smart lock products, which have benefited consumers.

a. **Lower Prices**

67. Competition between Defendants' smart lock brands constrains price increases. For example, in December 2019, the head of ASSA ABLOY's Global Smart Residential group explained to ASSA ABLOY's CEO that the company was unable to raise prices on ASSA ABLOY's smart locks because of "strong competition" from its two largest rivals, including Spectrum HHI's Kwikset. And ASSA ABLOY's CEO was told that any evidence of Spectrum HHI "raising prices on Kwikset smart locks" would be an "opportunity to take price," *i.e.*, increase prices. In fact, one source of additional revenue that ASSA ABLOY expects to realize from acquiring Spectrum HHI is to "increase [the] price of Yale products" by leveraging Spectrum HHI's "scale and pricing power," especially in big box (also known as "Do It Yourself" or "DIY") home improvement stores. ASSA ABLOY anticipates that, "[w]ith scale from [Spectrum HHI], Yale will be in a better pricing negotiation position and can expect to increase prices."

68. Competition between Defendants' smart lock brands has also often resulted in Defendants lowering their prices to win business from the other or to prevent a customer from switching to the other. One example was a request for proposals in 2020 to supply a home security company with smart locks, in which Spectrum HHI's Kwikset was "going against Yale predominantly." ASSA ABLOY's Yale had made a "very competitive . . . offer," and, in response, Kwikset decided to make a "margin challenged" bid because, in the assessment of Spectrum HHI's chief marketing officer, the home security company is "one of few, bigger swing players in this type of market to make a bet on and I don't want Yale to get it." In another example, in 2021, Yale was "trying to undercut [Kwikset's] pricing again" for a smart home company, and in response, Kwikset lowered its pricing "to keep Yale out of there."

69. ASSA ABLOY has more recently taken "an aggressive approach" on pricing to take smart lock market share from Spectrum HHI's Kwikset in DIY home improvement stores. Starting in 2021, ASSA ABLOY implemented a strategy to organically grow its smart lock business in the United States, primarily by growing in the DIY sales channel, in which it has historically been under-exposed, and where Kwikset benefits from an incumbent position. ASSA ABLOY sought to do so by introducing "new entry-to-mid" price point smart locks under the Yale brand to compete with its two largest rivals, including Kwikset, and "take [a half] bay [*i.e.*, shelf space] in entry-to-mid from" one or both of them, thereby significantly increasing its share of sales in the DIY channel. Before the new smart locks could be rolled out in the third quarter of 2022, ASSA ABLOY sought to use an "aggressive" price reduction on its existing smart lock products to "get a foothold into Home Depot" and greatly expand the number of Home Depot locations that carry Yale or August smart locks.

70. The centerpiece of ASSA ABLOY's "focused retail strategy" is the introduction of a new version of its Yale Assure smart lock, also called the 400 Series, which will offer price points 15-25% lower than Yale's existing smart locks for equivalent functionality, putting Yale's smart locks on par with the pricing of Spectrum's Kwikset's smart locks.

b. New and Innovative Smart Locks

71. Competition between ASSA ABLOY and Spectrum HHI has also spurred innovation and the introduction of new smart locks, which has benefited consumers. For example, as alleged in paragraphs 69-70, ASSA ABLOY developed a new line of smart locks—the Yale 400 Series—to compete against Kwikset. The 400 Series locks will not only be sold at lower prices than Yale's existing smart locks, but they will also be 30% smaller, giving them a sleeker, more compact appearance. The 400 Series will also offer new features, including a **[REDACTED]**. Beyond the 400 Series, ASSA ABLOY is also

developing other, lower-priced smart locks in response to "low cost lock leaders" including Kwikset.

72. Kwikset has likewise innovated new smart locks in response to ASSA ABLOY. For example, it is developing a smart lock to compete against the pricing and features of Yale's existing Assure smart lock, including to "match the flexibility offered by Yale." Kwikset also developed a new Z-Wave smart lock in 2021 with features that were "absolutely necessary to catch up to where Yale has been for many years."

C. The Proposed Transaction Would Make Anticompetitive Coordination More Likely

73. In the premium mechanical door hardware market, the proposed transaction would eliminate important competition among major rivals and create an even more dominant firm within a highly concentrated market. As a result, there is an increased risk that harm from tacit or other forms of coordination would become more likely due to the proposed transaction.

74. In the smart lock market, the proposed transaction would make coordination more likely by creating a duopoly consisting of the merged firm and its largest competitor, collectively accounting for more than 70% of sales in the market. In that market structure, the two dominant firms would have an increased ability to analyze and plan for one another's conduct. By increasing the likelihood of interdependent behavior among competitors in the smart lock market, the proposed transaction may substantially lessen competition and keep prices high in that market.

ABSENCE OF COUNTERVAILING FACTORS

75. New entry or expansion by existing competitors in response to an exercise of market power by the post-transaction firm would not be likely, timely, or sufficient in its magnitude, scope, or character to deter or fully offset the proposed transaction's likely anticompetitive effects.

76. Barriers to merger-induced entry and expansion are high in the market for premium mechanical door hardware. First, significant financial investment and time are needed to earn and maintain market recognition as a "premium" or "luxury" brand. Second, premium brands require an exceptionally broad product offering to be competitive, which is expensive and time consuming to design and manufacture at scale. Third, the customer base of specialized dealers is highly fragmented and costly to serve, requiring large upfront investments in a widespread and knowledgeable sales force and costly marketing collateral (*e.g.*, in-store displays). Fourth, ASSA ABLOY'S EMTEK and Spectrum's Baldwin have developed an entrenched and dominant physical and reputational presence in showrooms and other dealers, which would be very difficult to displace. As Baldwin's sales director observed after the proposed transaction was announced, the combination of EMTEK and Baldwin "should be able to dominate every showroom in the country."

77. Barriers to entry and expansion are also high in the smart locks market. First, it is costly to develop competitive smart lock products, both initially and over time, because doing so requires sophisticated software and hardware engineering capabilities. Second, it takes time and money to break through as a brand that is known and trusted by consumers. Large incumbents like ASSA ABLOY and Spectrum HHI have a structural advantage in branding because they have been able to build up strong brand recognition over time, which has created a virtuous cycle in which brand recognition spurs increased sales, which further grows the incumbents' market presence, which in turn spurs further increased sales, and so on. It would be difficult for a new entrant or a smaller existing competitor to disrupt that structural advantage. Third, significant operational scale is needed to serve many of the most important groups of smart lock customers, especially big-box home improvement stores, consumer electronics stores, home builders, and home security companies.

78. Neither the premium mechanical door hardware market nor the smart lock market has any unique structural barriers to collusion. Any barriers to collusion in these markets are no greater than in other industries and therefore would not overcome the normal presumption that the increased concentration resulting from the proposed transaction would increase the likelihood of interdependent behavior among competitors, such as tacit collusion.

79. The proposed transaction is also unlikely to generate verifiable, merger-specific efficiencies sufficient to prevent or outweigh the anticompetitive effects that the proposed transaction is likely to cause in the relevant markets.

DEFENDANTS' PROPOSED DIVESTITURES ARE INSUFFICIENT TO REMEDY THE PROPOSED TRANSACTION'S ANTICOMPETITIVE EFFECTS

80. ASSA ABLOY and Spectrum have known all along that their proposed transaction presented significant antitrust concerns. The obvious antitrust problems triggered much hand-wringing and negotiation at the highest levels of both companies about how to handle the "anti-trust situation" the transaction would create. In July 2021, during due diligence for the proposed transaction, ASSA ABLOY executives were "having daily calls on antitrust" and acknowledged early on that the overlap between EMTEK and Baldwin would be "the biggest focus" for competition enforcers. Spectrum wanted assurance that ASSA ABLOY would do whatever it would take to appease antitrust enforcers' objections, but ASSA ABLOY jealously guarded the collection of assets it had acquired, particularly the assets that make up its "Yale Global business," and it was reluctant to commit to divest them.

81. Ultimately, Defendants' discussions about how to navigate inevitable antitrust objections became so contentious that the transaction's anticompetitive nature nearly sank the proposed deal before it could be signed. On the afternoon of September 7, 2021, hours before the proposed transaction was announced, ASSA ABLOY's CEO wrote to Spectrum's CEO that, based on unresolved disagreements about how to handle

the antitrust risks of the proposed transaction, ASSA ABLOY had "come to the conclusion to withdraw from the process and proceed with other opportunities."

82. Although Defendants were apparently able to resolve their disagreements at the eleventh hour, the proposed transaction's antitrust problems remained. Accordingly, in the summer of 2022, ASSA ABLOY and Spectrum effectively conceded that their proposed transaction would harm competition by proposing a "remedy" to antitrust enforcers that would involve ASSA ABLOY selling off parts of its business units that that sell residential door hardware in the United States. Selling that incomplete package of assets would not replicate the intensity of competition that exists today.

83. The touchstone of any appropriate antitrust remedy is the immediate, durable, and complete preservation of competition. Merely transplanting assets from one firm to another is not an effective antitrust remedy because it creates unacceptable risks of diluting the intensity of competition—the risk of creating a firm with less incentive, ability, or resources than the original owner to use the divested assets in service of competition, the risk of entanglement or conflict between the buyer and seller of the divested assets, and the risk of the buyer liquidating or redeploying the divested assets. Defendants bear the heavy burden of establishing that any remedy they propose meets these exacting standards, especially given the substantial competitive problems their proposed deal presents, and they cannot meet that burden here.

84. Defendants have not disclosed all of the details of their proposed "remedy" and have not identified any potential buyer for divested assets, but they have disclosed some information about the assets they propose to divest to try to "fix" their flawed transaction. In particular, the parties offered to divest portions of ASSA ABLOY's Mechanical Residential business unit relating only to the EMTEK brand and portions of ASSA ABLOY's Global Smart Residential business unit relating only to Yale and August smart locks sold in the United States and Canada. These partial divestitures

would be insufficient to preserve the intensity of existing competition. They would split up existing business units, cutting off the divested assets from the organization, resources, and efficiencies that have allowed ASSA ABLOY to be a leading competitor in the United States premium mechanical door hardware and smart lock markets.

85. The parties' proposed divestitures would be insufficient even if a transfer of assets were executed flawlessly, but the complex carving out (and in some cases splitting) of manufacturing capacity, warehouses, personnel, intellectual property, supply chain relationships, and other resources is virtually guaranteed to be anything but flawless. American consumers should not be forced to underwrite this risky experiment in corporate reorganization. The only way to ensure that does not happen is to block Defendants' proposed transaction.

JURISDICTION AND VENUE

86. The United States brings this action, and this Court has subject-matter jurisdiction over this action, under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

87. Defendants are engaged in, and their activities substantially affect, interstate commerce. ASSA ABLOY and Spectrum sell products to numerous customers located throughout the United States.

88. This Court has personal jurisdiction over each Defendant under Section 12 of the Clayton Act, 15 U.S.C. § 22. ASSA ABLOY and Spectrum both transact business in this District. ASSA ABLOY and Spectrum have also both consented to personal jurisdiction in this District.

89. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. §§ 1391(b) and (c). ASSA ABLOY and Spectrum both reside in this District.

VIOLATION ALLEGED

90. The United States hereby incorporates the allegations of paragraphs 1 through 89 above as if set forth fully herein.

91. Unless enjoined, ASSA ABLOY's proposed acquisition of Spectrum HHI may lessen competition substantially and tend to create a monopoly in premium mechanical door hardware and smart locks in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

92. Among other things, the proposed acquisition would:

a. eliminate significant present and future head-to-head competition between ASSA ABLOY and Spectrum HHI;

b. reduce competition generally in the relevant markets;

c. reduce competition to innovate in the relevant markets;

d. cause prices to rise for customers in the relevant markets;

e. cause a reduction in product quality in the relevant markets; and

f. cause a reduction in customer service in the relevant markets.

RELIEF REQUESTED

93. Plaintiff requests that the Court:

a. adjudge and decree that ASSA ABLOY's proposed acquisition of Spectrum HHI is unlawful and violates Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. permanently enjoin and restrain Defendants and all persons acting on their behalf from consummating the proposed transaction or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine ASSA ABLOY and Spectrum HHI;

c. award the United States the costs of this action; and

d. award the United States such other relief that the Court deems just and proper.

Dated this 15th day of September, 2022.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff,* v. ASSA ABLOY AB, *et al.*, *Defendants.*	Civil No. 1:22-cv-02791-ACR

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on September 15, 2022;

AND WHEREAS, the United States and Defendants, ASSA ABLOY AB ("ASSA ABLOY") and Spectrum Brands Holdings, Inc. ("Spectrum") have consented to entry of this Final Judgment without this Final Judgment constituting any evidence against or admission by any party relating to any issue of fact or law;

AND WHEREAS, Defendants agree to make certain divestitures;

AND WHEREAS, Defendants represent that the divestitures and other relief required by this Final Judgment can and will be made and that Defendants will not later raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of this Final Judgment;

NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act (15 U.S.C. § 18).

II. DEFINITIONS

As used in this Final Judgment:

A. "ASSA ABLOY" means Defendant ASSA ABLOY AB, a publicly traded Swedish stock company headquartered in Stockholm, Sweden, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Spectrum" means Defendant Spectrum Brands Holdings, Inc., a Delaware corporation with its headquarters in Middleton, Wisconsin, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Fortune" means Fortune Brands Innovations, Inc., a Delaware corporation with its headquarters in Deerfield, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Acquirer" or "Acquirers" means Fortune or another entity, approved by the United States in its sole discretion, to which ASSA ABLOY divests the Divestiture Assets.

E. "Divestiture Assets" means (1) the Premium Mechanical Divestiture Assets; and (2) the Smart Lock Divestiture Assets.

F. "Divestiture Date" means the date on which the closing of the transaction between ASSA ABLOY and Acquirer occurs.

G. "Door" means a swinging door or pocket door used for ingress to a room, closet, dwelling, or passageway, but does not include cabinet doors, rolling doors, garage doors, and, except to the extent located at Residences, delivery locker doors.

H. "Including" means including, but not limited to.

I. "Multifamily" means, with respect to any buildings containing more than one Residence, whether or not such buildings have mixed uses, Residences in such buildings, along with common areas associated with Residences in such buildings, including entrances and exits (but not educational, medical, retail, commercial, industrial, or professional areas not associated with Residences).

J. "Premium Mechanical Divestiture Business" means ASSA ABLOY's (1) Emtek branded business, and (2) Schaub branded business.

K. "Premium Mechanical Divestiture Assets" means, at the option of Acquirer, all of ASSA ABLOY's rights, titles, and interests in and to all property and assets, tangible and intangible, wherever located, relating to or used in connection with the Premium Mechanical Divestiture Business, including:

1. the Emtek brand name and the Schaub brand name, including the right to the exclusive and unlimited worldwide use of the Emtek brand name and the Schaub brand name in all sales channels, as well as all registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications, relating to the Emtek and Schaub trademarks;

2. leasehold interest to the real property and facilities located at 600 Baldwin Park Boulevard, City of Industry, California;

3. all other real property, including fee simple interests, real property leasehold interests and renewal rights thereto, improvements to real property, and options to purchase any adjoining or other property, together with all buildings, facilities, and other structures;

4. all tangible personal property, including fixed assets, machinery and manufacturing equipment, tools, vehicles, inventory, materials, office equipment and furniture, computer hardware, and supplies;

5. all contracts, contractual rights, and customer relationships, and all other agreements, commitments, and understandings, including supply agreements, teaming agreements, and leases, and all outstanding offers or solicitations to enter into a similar arrangement;

6. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations, including those issued or granted by any governmental organization, and all pending applications or renewals;

7. all records and data, including (i) customer lists, accounts, sales, and credits records, (ii) production, repair, maintenance, and performance records, (iii) manuals and technical information ASSA ABLOY provides to its own employees, customers, suppliers, agents, or licensees, (iv) records and research data concerning historic and current research and development activities, including designs of experiments and the results of successful and unsuccessful designs and experiments, and (v) drawings, blueprints, and designs;

8. in addition to the intellectual property assets listed in Paragraph II.K.1., all other intellectual property owned, licensed, or sublicensed, either as licensor or licensee, including (i) patents, patent applications, and inventions and discoveries that may be patentable, (ii) registered and unregistered copyrights and copyright applications, and (iii) registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications; and

9. all other intangible property, including (i) commercial names and d/b/a names, (ii) technical information, (iii) computer software and related documentation, know-how, trade secrets, design protocols, specifications for materials, specifications for parts, specifications for devices, safety procedures (e.g., for the handling of materials and substances), quality assurance and control procedures, (iv)

design tools and simulation capabilities, and (v) rights in internet web sites and internet domain names.

L. "Premium Mechanical Divestiture Relevant Personnel" means, at the option of Acquirer, all full-time, part-time, or contract employees of ASSA ABLOY, wherever located, whose job responsibilities relate in any way to the Premium Mechanical Divestiture Business, at any time between September 8, 2021, and the Divestiture Date. Subject to Acquirer's election, the United States, in its sole discretion, will resolve any disagreement relating to which employees are Premium Mechanical Divestiture Relevant Personnel.

M. "Regulatory Approvals" means (1) any approvals or clearances pursuant to filings under antitrust or competition laws that are required for the Transaction to proceed; and (2) any approvals or clearances pursuant to filings under antitrust, competition, or other U.S. or international laws that are required for Acquirer's acquisition of the Divestiture Assets to proceed.

N. "Residences" means single family homes and residential units within Multifamily dwellings, whether owned or whether leased or offered for long-term or short-term use by a unit or home owner directly or through a third party, including apartments, co-ops, and condominiums, and properties provided by AirBnB, VRBO and similar businesses, but not including hotel rooms, rooms in medical and long-term care facilities, dormitory rooms, and prison cells.

O. "Smart Lock" means a wireless connected digital lock affixed to a Door, but does not include any of the product categories listed in Appendix A.

P. "Smart Lock Divestiture Business" means: (1) the August branded business, and (2) the Yale branded Multifamily and residential Smart Lock businesses in the U.S. and Canada (including Yale Real Living), but does not include (i) the Yale

branded commercial business anywhere in the world, and (ii) all other Yale branded businesses anywhere in the world.

Q. "Smart Lock Divestiture Assets" means the (1) Yale Brand and Trademarks; and (2) at the option of Acquirer, all of ASSA ABLOY's rights, titles, and interests in and to all property and assets, tangible and intangible, wherever located, relating to or used in connection with the Smart Lock Divestiture Business, including:

i. The Premises Sublease Agreement, by and between VINA – CPK COMPANY LIMITED and ASSA ABLOY Smart Product Vietnam Co., Ltd., dated July 23, 2019;

ii. all other real property, including fee simple interests, real property leasehold interests and renewal rights thereto, improvements to real property, and options to purchase any adjoining or other property, together with all buildings, facilities, and other structures;

iii. all tangible personal property, including fixed assets, machinery and manufacturing equipment, tools, vehicles, inventory (including Yale branded residential mechanical inventory), materials, office equipment and furniture, computer hardware, and supplies;

iv. all contracts, contractual rights, and customer relationships, and all other agreements, commitments, and understandings, including supply agreements, teaming agreements, and leases, and all outstanding offers or solicitations to enter into a similar arrangement;

v. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations, including those issued or granted by any governmental organization, and all pending applications or renewals;

vi. all records and data, including (i) customer lists, accounts, sales, and credits records, (ii) production, repair, maintenance, and performance records, (iii)

manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees, (iv) records and research data concerning historic and current research and development activities, including designs of experiments and the results of successful and unsuccessful designs and experiments, and (v) drawings, blueprints, and designs;

vii. all intellectual property owned, licensed, or sublicensed, either as licensor or licensee, including (i) patents, patent applications, and inventions and discoveries that may be patentable, (ii) registered and unregistered copyrights and copyright applications, and (iii) registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications;

viii. all other intangible property, including (i) commercial names and d/b/a names, (ii) technical information, (iii) computer software and related documentation, know-how, trade secrets, design protocols, specifications for materials, specifications for parts, specifications for devices, safety procedures (e.g., for the handling of materials and substances), quality assurance and control procedures, (iv) design tools and simulation capabilities, (v) rights in internet web sites and internet domain names;

ix. an exclusive, perpetual, irrevocable, royalty-free, and sublicensable license to install, copy, modify, create derivative works of, and use solely in the United States and Canada, any access control systems designed for Residences including mobile applications and backend ecosystems, including the Yale Access software platform, *provided, however,* that nothing in this paragraph prohibits ASSA ABLOY from retaining, for use outside the United States and Canada, an independent instance of any internally developed access control system designed for Residences; and

R. "Smart Lock Divestiture Relevant Personnel" means, at the option of Acquirer, all full-time, part-time, or contract employees of ASSA ABLOY, wherever

located, whose job responsibilities relate in any way to the Smart Lock Divestiture Business, at any time between September 8, 2021 and the Divestiture Date. The United States, in its sole discretion, will resolve any disagreement relating to which employees are Smart Lock Divestiture Relevant Personnel.

S. "Transfer of Smart Lock Foreign Divestiture Assets" means transfer of the Smart Lock Divestiture Assets located at Lot A10, Ba Thien II IP, Thien Ke, Binh Xuyen, Vinh Phuc Vietnam.

T. "Transaction" means the proposed acquisition of Spectrum's Hardware and Home Improvement Division by ASSA ABLOY, pursuant to a purchase agreement dated September 8, 2021, as amended.

U. "Yale Brand and Trademarks" means the ownership and exclusive and unrestricted use of the Yale brand name and the business goodwill associated therewith in the U.S. and Canada for all current and future residential uses and all current and future Multifamily Smart Lock uses (including all interconnect-style Smart Locks for Multifamily uses and nexTouch Smart Locks for Multifamily uses and any future products with similar functionality and applications as interconnect and nexTouch Smart Locks in Residential and Multifamily uses).

III. APPLICABILITY

A. This Final Judgment applies to ASSA ABLOY and Spectrum, as defined above, and all other persons in active concert or participation with any Defendant who receive actual notice of this Final Judgment.

B. If, prior to complying with Section V and Section VI of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of business units that include the Divestiture Assets, Defendants must require any purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from Acquirer.

IV. ADDITIONAL RELIEF

If, after three years following the Divestiture Date and until the date that is five years from entry of this Final Judgment, the monitoring trustee determines, after investigation and consultation with the United States, ASSA ABLOY and Acquirer, that:

a. Acquirer's competitive intensity in the residential Smart Locks business has diminished relative to ASSA ABLOY's competitive intensity in that business as of the Divestiture Date; and

b. Such diminishment in competitive intensity is in material part due to limitations on Acquirer's right to use the rights held by ASSA ABLOY to the Yale brand name or trademarks in the U.S. and Canada as of the Divestiture Date, then

the monitoring trustee may, after consultation with the United States, provide a written report of the monitoring trustee's conclusions to the United States. Upon receiving such report, the United States, in its sole discretion, will have the ability to seek leave of the Court to re-open this proceeding specifically to seek only the grant of additional Yale brand name or trademark rights (including the ability to use those rights to compete for any category or customer segment) in the U.S. and Canada to Acquirer.

V. DIVESTITURE OF THE PREMIUM MECHANICAL DIVESTITURE ASSETS

A. ASSA ABLOY is ordered and directed, within 3 calendar days after the closing of the Transaction, to divest the Premium Mechanical Divestiture Assets in a manner consistent with this Final Judgment to Acquirer, except that, for individual assets subject to Regulatory Approvals, ASSA ABLOY is ordered and directed to divest such assets by the later of 3 calendar days after the closing of the Transaction or 15 days after the relevant Regulatory Approvals have been received. The United States, in its sole discretion, may agree to one or more extensions of these time periods not to exceed 30

calendar days in total for each time period, and ASSA ABLOY must notify the Court of any extensions agreed to by the United States.

B. At the option of the Acquirer, for all contracts, agreements, and customer relationships (or portions of such contracts, agreements, and customer relationships) included in the Premium Mechanical Divestiture Assets, ASSA ABLOY must, assign or otherwise transfer all contracts, agreements, and customer relationships, to the Acquirer within the deadlines set forth in Paragraph V.A. ASSA ABLOY must not interfere with any negotiations between Acquirer and a contracting party.

C. Subject to Paragraph V.A, ASSA ABLOY must use best efforts to divest the Premium Mechanical Divestiture Assets as expeditiously as possible. ASSA ABLOY must take no action that would jeopardize the completion of the divestiture ordered by the Court, including any action to impede the permitting, operation, or divestiture of the Premium Mechanical Divestiture Assets.

D. Unless the United States otherwise consents in writing, divestiture pursuant to this Final Judgment must include the entire Premium Mechanical Divestiture Assets.

E. In the event ASSA ABLOY is attempting to divest the Divestiture Assets to an Acquirer other than Fortune, ASSA ABLOY promptly must make known, by usual and customary means, the availability of the Divestiture Assets. ASSA ABLOY must inform any person making an inquiry relating to a possible purchase of the Divestiture Assets that the Divestiture Assets are being divested in accordance with this Final Judgment and must provide that person with a copy of this Final Judgment. ASSA ABLOY must offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets that are customarily provided in a due diligence process; *provided, however,* that ASSA ABLOY need not provide information or documents subject to the attorney-client

privilege or work-product doctrine. ASSA ABLOY must make all information and documents available to the United States at the same time that the information and documents are made available to any other person.

F. At the option of the Acquirer, ASSA ABLOY must provide prospective Acquirers with (1) access to make inspections of the Premium Mechanical Divestiture Assets; (2) access to all material environmental, zoning, and other permitting documents and information relating to the Premium Mechanical Divestiture Assets; and (3) access to all financial, operational, or other documents and information relating to the Premium Mechanical Divestiture Assets, in each case, that would customarily be provided as part of a due diligence process. ASSA ABLOY also must disclose all material encumbrances on any part of the Premium Mechanical Divestiture Assets, including on intangible property.

G. At the option of the Acquirer, ASSA ABLOY must cooperate with and assist Acquirer in identifying and hiring all Premium Mechanical Divestiture Relevant Personnel, including:

1. Within 10 business days following the receipt of a request by Acquirer, ASSA ABLOY must identify all Premium Mechanical Divestiture Relevant Personnel to Acquirer and the United States, including by providing organization charts covering all Premium Mechanical Divestiture Relevant Personnel.

2. Within 10 business days following receipt of a request by Acquirer or the United States, ASSA ABLOY must provide to Acquirer and the United States additional information relating to Premium Mechanical Divestiture Relevant Personnel, including name, job title, reporting relationships, past experience, responsibilities, training and educational histories, relevant certifications, and job performance evaluations. ASSA ABLOY must also provide Acquirer and the United States information relating to current and accrued compensation and benefits of Premium

Mechanical Divestiture Relevant Personnel, including most recent bonuses paid, aggregate annual compensation, any current target or guaranteed bonuses, if any, any retention agreement or incentives, and any other payments due, compensation or benefits accrued, or promises made to the Premium Mechanical Divestiture Relevant Personnel. If ASSA ABLOY is barred by any applicable law from providing any of this information, ASSA ABLOY must provide, within 10 business days following receipt of the request, the requested information to the full extent permitted by law and also must provide a written explanation to Acquirer and the United States of ASSA ABLOY's inability to provide the remaining information, including specifically identifying the provisions of the applicable laws.

3. At the request of Acquirer, ASSA ABLOY must promptly make Premium Mechanical Divestiture Relevant Personnel available for private interviews with Acquirer during normal business hours at a mutually agreeable location.

4. ASSA ABLOY must not interfere with any effort by Acquirer to employ any Premium Mechanical Divestiture Relevant Personnel. Interference includes offering to increase the compensation or improve the benefits of Premium Mechanical Divestiture Relevant Personnel unless (i) the offer is part of a company-wide increase in compensation or improvement in benefits that was announced prior to September 8, 2021, or (ii) the offer is approved by the United States in its sole discretion. ASSA ABLOY's obligations under this Paragraph V.G.4. will expire 180 calendar days after the Divestiture Date.

5. For Premium Mechanical Divestiture Relevant Personnel who elect employment with Acquirer within 180 calendar days of the Divestiture Date, ASSA ABLOY must waive all non-compete and non-disclosure agreements; vest and pay to the Premium Mechanical Divestiture Relevant Personnel (or to Acquirer for payment to the employee) on a prorated basis any bonuses, incentives, other salary, benefits or other

compensation fully or partially accrued at the time of the transfer of the employee to Acquirer; vest any unvested pension and other equity rights; and provide all other benefits that those Premium Mechanical Divestiture Relevant Personnel otherwise would have been provided had the Premium Mechanical Divestiture Relevant Personnel continued employment with ASSA ABLOY, including any retention bonuses or payments. ASSA ABLOY may maintain reasonable restrictions on disclosure by Premium Mechanical Divestiture Relevant Personnel of ASSA ABLOY's proprietary non-public information that is unrelated to the Premium Mechanical Divestiture Assets and not otherwise required to be disclosed by this Final Judgment.

6. For a period of 180 calendar days from the Divestiture Date, ASSA ABLOY may not solicit to rehire any Premium Mechanical Divestiture Relevant Personnel who were hired by Acquirer within 90 calendar days of the Divestiture Date unless (a) an individual is terminated or laid off by Acquirer or (b) Acquirer agrees in writing that ASSA ABLOY may solicit to rehire that individual. Nothing in this Paragraph V.G.6. prohibits ASSA ABLOY from advertising employment openings using general solicitations or advertisements and rehiring Premium Mechanical Divestiture Relevant Personnel who apply for an employment opening through a general solicitation or advertisement.

H. At the option of the Acquirer, ASSA ABLOY must warrant to Acquirer that (1) the Premium Mechanical Divestiture Assets will be operational in all material respects and without material defect on the date of their transfer to Acquirer; (2) there are no material defects in the environmental, zoning, or other permits relating to the operation of the Premium Mechanical Divestiture Assets; and (3) ASSA ABLOY has disclosed all material encumbrances on any part of the Premium Mechanical Divestiture Assets, including on intangible property. Following the sale of the Premium Mechanical Divestiture Assets, ASSA ABLOY must not undertake, directly or indirectly, challenges

to the environmental, zoning, or other permits relating to the operation of the Premium Mechanical Divestiture Assets.

I. At the option of the Acquirer, ASSA ABLOY must use best efforts to assist Acquirer to obtain all necessary licenses, registrations, and permits to operate the Premium Mechanical Divestiture Business. Until Acquirer obtains the necessary licenses, registrations, and permits, ASSA ABLOY must provide Acquirer with the benefit of ASSA ABLOY's licenses, registrations, and permits to the full extent permissible by law.

J. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the Divestiture Date, ASSA ABLOY must enter into a supply contract or contracts for all products necessary to operate the Premium Mechanical Divestiture Business for a period of up to 12 months, on terms and conditions reasonably related to market conditions for the provision of such products, as agreed to by Acquirer.

K. Any amendment to or modification of any provision of any such supply contract is subject to approval by the United States, in its sole discretion. The United States, in its sole discretion, may approve up to two extensions of any supply contract for a period of 12 months each. Any supply contract extension will be on terms and conditions reasonably related to market conditions for the provision of such products, as agreed to by Acquirer. If Acquirer seeks an extension of the term of any supply contract, ASSA ABLOY must notify the United States in writing at least 30 calendar days prior to the date the supply contract expires. Acquirer may terminate a supply contract, or any portion of a supply contract, without cost or penalty, other than payment of any amounts due thereunder, upon 15 calendar days' written notice. The employees of ASSA ABLOY tasked with servicing any supply contracts must not share any competitively sensitive information of Acquirer with any other employee of ASSA ABLOY.

L. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the Divestiture Date, ASSA ABLOY must enter into a contract to provide transition services to cover all services necessary to operate the Premium Mechanical Divestiture Business, including services for back office, human resources, accounting, employee health and safety, and information technology services and support for a period of up to 12 months on terms and conditions reasonably related to market conditions for the provision of the transition services, as agreed to by Acquirer.

M. Any amendment to or modification of any provision of a contract to provide transition services is subject to approval by the United States, in its sole discretion. The United States, in its sole discretion, may approve one or more extensions of any contract for transition services, for a total of up to an additional 12 months. Any contract extension will be on terms and conditions reasonably related to market conditions for the provision of such services, as agreed to by Acquirer. If Acquirer seeks an extension of the term of any contract for transition services, ASSA ABLOY must notify the United States in writing at least 30 calendar days prior to the date the contract expires. Acquirer may terminate a contract for transition services, or any portion of a contract for transition services, without cost or penalty, other than payment of any amounts due thereunder, at any time upon 15 calendar days' written notice. The employees of ASSA ABLOY tasked with providing transition services must not share any competitively sensitive information of Acquirer with any other employee of ASSA ABLOY.

N. If any term of an agreement between ASSA ABLOY and Acquirer, including an agreement to effectuate the divestiture required by this Final Judgment, varies from a term of this Final Judgment including as implemented by the Asset Preservation and Stipulation and Order entered contemporaneously herewith, to the

extent that ASSA ABLOY cannot fully comply with both, this Final Judgment as so implemented determines ASSA ABLOY's obligations.

VI. DIVESTITURE OF SMART LOCK DIVESTITURE ASSETS

A. ASSA ABLOY is ordered and directed, within 3 calendar days after the closing of the Transaction, to divest the Smart Lock Divestiture Assets in a manner consistent with this Final Judgment to Acquirer, except that, for individual assets subject to Regulatory Approvals, ASSA ABLOY is ordered and directed to divest such assets by the later of 3 calendar days after the closing of the Transaction or 15 days after the relevant Regulatory Approvals have been received. The United States, in its sole discretion, may agree to one or more extensions of these time periods not to exceed 30 calendar days in total for each time period, and ASSA ABLOY must notify the Court of any extensions agreed to by the United States.

B. At the option of Acquirer, for all contracts, agreements, and customer relationships (or portions of such contracts, agreements, and customer relationships) included in the Smart Lock Divestiture Assets, ASSA ABLOY must assign or otherwise transfer all contracts, agreements, and customer relationships, to the Acquirer within the deadlines set forth in Paragraph VI.A. ASSA ABLOY must not interfere with any negotiations between Acquirer and a contracting party.

C. Subject to Paragraph VI.A, ASSA ABLOY must use best efforts to divest the Smart Lock Divestiture Assets as expeditiously as possible. ASSA ABLOY must take no action that would jeopardize the completion of the divestiture ordered by the Court, including any action to impede the permitting, operation, or divestiture of the Smart Lock Divestiture Assets. To incentivize ASSA ABLOY to achieve Transfer of Smart Lock Foreign Divestiture Assets as expeditiously as possible, after December 31, 2023, ASSA ABLOY is ordered to pay to the United States $50,120 per day until ASSA ABLOY achieves Transfer of Smart Lock Foreign Divestiture Assets, *provided, however,* that

such payments will not be due if ASSA ABLOY can demonstrate to the United States, after consultation with the monitoring trustee, that (1) Transfer of Smart Lock Foreign Divestiture Assets was delayed due to a force majeure event, or (2) operational control has otherwise been given to the Acquirer such that the purposes of the divestiture have been carried out. If ASSA ABLOY relies on point (2) of this provision, it shall confer with the United States in an effort to reach agreement on whether the steps taken carry out the purposes of the divestiture, and if the parties are unable to reach agreement, ASSA ABLOY may ask the Court to resolve this issue. The United States' agreement to an extension pursuant to Paragraph VI.A. will not relieve ASSA ABLOY of the requirement to make these payments. If ASSA ABLOY demonstrates to the United States that unanticipated material difficulties not due to the actions or inaction of ASSA ABLOY have resulted in unavoidable delays to achieve Transfer of Smart Lock Foreign Divestiture Assets, the United States may, in its sole discretion, agree to forgo some or all of the payments.

D. Unless the United States otherwise consents in writing, divestiture pursuant to this Final Judgment must include all Smart Lock Divestiture Assets.

E. In the event ASSA ABLOY is attempting to divest the Divestiture Assets to an Acquirer other than Fortune, ASSA ABLOY promptly must make known, by usual and customary means, the availability of the Divestiture Assets. ASSA ABLOY must inform any person making an inquiry relating to a possible purchase of the Divestiture Assets that the Divestiture Assets are being divested in accordance with this Final Judgment and must provide that person with a copy of this Final Judgment. ASSA ABLOY must offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets that are customarily provided in a due diligence process; *provided, however,* that ASSA ABLOY need not provide information or documents subject to the attorney-client

privilege or work-product doctrine. ASSA ABLOY must make all information and documents available to the United States at the same time that the information and documents are made available to any other person.

F. At the option of Acquirer, ASSA ABLOY must provide prospective Acquirers with (1) access to make inspections of the Smart Lock Divestiture Assets; (2) access to all material environmental, zoning, and other permitting documents and information relating to the Smart Lock Divestiture Assets; and (3) access to all financial, operational, or other documents and information relating to the Smart Lock Divestiture Assets, in each case, that would customarily be provided as part of a due diligence process. ASSA ABLOY also must disclose all material encumbrances on any part of the Smart Lock Divestiture Assets, including on intangible property.

G. At the option of Acquirer, ASSA ABLOY must cooperate with and assist Acquirer in identifying and, hiring all Smart Lock Divestiture Relevant Personnel, including:

1. Within 10 business days following the receipt of a request by Acquirer, ASSA ABLOY must identify all Smart Lock Divestiture Relevant Personnel to Acquirer and the United States, including by providing organization charts covering all Smart Lock Divestiture Relevant Personnel.

2. Within 10 business days following receipt of a request by Acquirer or the United States, ASSA ABLOY must provide to Acquirer and the United States additional information relating to Smart Lock Divestiture Relevant Personnel, including name, job title, reporting relationships, past experience, responsibilities, training and educational histories, relevant certifications, and job performance evaluations. ASSA ABLOY must also provide Acquirer and the United States information relating to current and accrued compensation and benefits of Smart Lock Divestiture Relevant Personnel, including most recent bonuses paid, aggregate annual compensation, any current target or

guaranteed bonuses, if any, any retention agreement or incentives, and any other payments due, compensation or benefits accrued, or promises made to the Smart Lock Divestiture Relevant Personnel. If ASSA ABLOY is barred by any applicable law from providing any of this information, ASSA ABLOY must provide, within 10 business days following receipt of the request, the requested information to the full extent permitted by law and also must provide a written explanation to Acquirer and the United States of ASSA ABLOY's inability to provide the remaining information, including specifically identifying the provisions of the applicable laws.

3. At the request of Acquirer, ASSA ABLOY must promptly make Smart Lock Divestiture Relevant Personnel available for private interviews with Acquirer during normal business hours at a mutually agreeable location.

4. ASSA ABLOY must not interfere with any effort by Acquirer to employ any Smart Lock Divestiture Relevant Personnel. Interference includes offering to increase the compensation or improve the benefits of Smart Lock Divestiture Relevant Personnel unless (a) the offer is part of a company-wide increase in compensation or improvement in benefits that was announced prior to September 8, 2021, or (b) the offer is approved by the United States in its sole discretion. ASSA ABLOY's obligations under this Paragraph VI.G.4. will expire 180 calendar days after the Divestiture Date.

5. For Smart Lock Divestiture Relevant Personnel who elect employment with Acquirer within 180 calendar days of the Divestiture Date, ASSA ABLOY must waive all non-compete and non-disclosure agreements; vest and pay to the Smart Lock Divestiture Relevant Personnel (or to Acquirer for payment to the employee) on a prorated basis any bonuses, incentives, other salary, benefits or other compensation fully or partially accrued at the time of the transfer of the employee to Acquirer; vested any unvested pension and other equity rights; and provide all other benefits that those Smart Lock Divestiture Relevant Personnel otherwise would have been provided had the

Smart Lock Divestiture Relevant Personnel continued employment with ASSA ABLOY, including any retention bonuses or payments. ASSA ABLOY may maintain reasonable restrictions on disclosure by Smart Lock Divestiture Relevant Personnel of ASSA ABLOY's proprietary non-public information that is unrelated to the Smart Lock Divestiture Assets and not otherwise required to be disclosed by this Final Judgment.

6. For a period of 180 calendar days from the Divestiture Date, ASSA ABLOY may not solicit to rehire any Smart Lock Divestiture Relevant Personnel who were hired by Acquirer within 90 calendar days of the Divestiture Date unless (i) an individual is terminated or laid off by Acquirer or (ii) Acquirer agrees in writing that ASSA ABLOY may solicit to rehire that individual. Nothing in this Paragraph VI.G.6. prohibits ASSA ABLOY from advertising employment openings using general solicitations or advertisements and rehiring any Smart Lock Divestiture Relevant Personnel who apply for an employment opening through a general solicitation or advertisement.

H. At the option of the Acquirer, ASSA ABLOY must warrant to Acquirer that (1) the Smart Lock Divestiture Assets will be operational in all material respects and without material defect on the date of their transfer to Acquirer; (2) there are no material defects in the environmental, zoning, or other permits relating to the operation of the Smart Lock Divestiture Assets; and (3) ASSA ABLOY has disclosed all material encumbrances on any part of the Smart Lock Divestiture Assets, including on intangible property. Following the sale of the Smart Lock Divestiture Assets, ASSA ABLOY must not undertake, directly or indirectly, challenges to the environmental, zoning, or other permits relating to the operation of the Smart Lock Divestiture Assets.

I. At the option of the Acquirer, ASSA ABLOY must use best efforts to assist Acquirer to obtain all necessary licenses, registrations, and permits to operate the Smart Lock Divestiture Business. Until Acquirer obtains the necessary licenses,

registrations, and permits, ASSA ABLOY must provide Acquirer with the benefit of ASSA ABLOY's licenses, registrations, and permits to the full extent permissible by law.

J. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the Divestiture Date, ASSA ABLOY must enter into a supply contract or contracts for all products necessary to operate the Smart Lock Divestiture Business, including nexTouch and Interconnect branded products produced by ASSA ABLOY prior to the Divestiture Date, for a period of up to 12 months, on terms and conditions reasonably related to market conditions for the provision of such products, as agreed to by Acquirer.

K. Any amendment to or modification of any provision of any such supply contract is subject to approval by the United States, in its sole discretion. The United States, in its sole discretion, may approve up to two extensions of any supply contract of 12 months each. Any contract extension will be on terms and conditions reasonably related to market conditions for the provision of such products, as agreed to by Acquirer. If Acquirer seeks an extension of the term of any supply contract, ASSA ABLOY must notify the United States in writing at least 30 calendar days prior to the date the supply contract expires. Acquirer may terminate a supply contract, or any portion of a supply contract, without cost or penalty, other than payment of any amounts due thereunder, upon 15 calendar days' written notice. The employees of ASSA ABLOY tasked with servicing any supply contracts must not share any competitively sensitive information of Acquirer with any other employee of ASSA ABLOY.

L. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the Divestiture Date, ASSA ABLOY must enter into a contract to provide transition services to cover (1) all services necessary to operate the Smart Lock Divestiture Business, including services for back office, human resources, accounting, employee health and safety, and information technology services and

support, and (2) all services necessary to operate the manufacturing facility at Lot A10, Ba Thien II IP, Thien Ke, Binh Xuyen, Vinh Phuc, Vietnam, for a period of up to 12 months on terms and conditions reasonably related to market conditions for the provision of the transition services.

M. Any amendment to or modification of any provision of a contract to provide transition services is subject to approval by the United States, in its sole discretion. The United States, in its sole discretion, may approve one or more extensions of any contract for transition services, for a total of up to 12 additional months, *provided, however,* that any contract extension will be on terms and conditions reasonably related to market conditions for the provision of such services. If Acquirer seeks an extension of the term of any contract for transition services, ASSA ABLOY must notify the United States in writing at least 30 calendar days prior to the date the contract expires. Acquirer may terminate a contract for transition services, or any portion of a contract for transition services, without cost or penalty, other than payment of any amounts due thereunder, at any time upon 15 calendar days' written notice. The employees of ASSA ABLOY tasked with providing transition services must not share any competitively sensitive information of Acquirer with any other employee of ASSA ABLOY.

N. ASSA ABLOY will have the right to use the Yale brand name in the U.S. and Canada solely for commercial products not sold for Residences for a transitional, wind-down period of up to twelve (12) months following the Divestiture Date. (For these purposes only, Residences does not include commercial products sold in order to fulfill orders in connection with the Yale Accentra platform for up to six months following the Divestiture Date and Acquirer may elect, with consent of the United States, to extend this term for an additional six months.) ASSA ABLOY must within 30 days following the Divestiture Date commence a brand transition for its Yale branded commercial products in the U.S. and Canada, which shall be completed no later than twelve (12) months after

commencement, in connection with the wind-down described above in this Paragraph. In addition, ASSA ABLOY will have the right to use the Yale brand name in the U.S. and Canada solely for commercial products for a transitional, wind-down for a period of up to two (2) years following the Divestiture Date with respect to sales of commercial products in connection with honoring any specification or quote, in each case issued prior to the Divestiture Date.

For the avoidance of doubt, nothing in this proposed Final Judgment limits or prohibits Acquirer's use of any non-Yale brand for any purpose.

O. If any term of an agreement between ASSA ABLOY and Acquirer, including an agreement to effectuate the divestiture required by this Final Judgment, varies from a term of this Final Judgment including as implemented by the Asset Preservation and Stipulation and Order entered contemporaneously herewith, to the extent that ASSA ABLOY cannot fully comply with both, this Final Judgment as so implemented determines ASSA ABLOY's obligations.

P. At the option of Acquirer, if at any time after the Divestiture Date, Acquirer notifies ASSA ABLOY in writing of any patents that (1) are owned by ASSA ABLOY as of the Divestiture Date; (2) are not licensed or otherwise transferred to Acquirer under Paragraphs II.Q.2.vii; and (3) were contemplated by ASSA ABLOY to be used in the Smart Lock Divestiture Business prior to the Divestiture Date as set forth in the Product Development Roadmap attached to the Stock Purchase Agreement, such patents will automatically be deemed licensed to Acquirer under Paragraph II.Q.2.vii.

Q. At the option of Acquirer, for a period of five years following the Divestiture Date, Acquirer will have the right to request and receive a code base assessment of the Yale Access control system once per year to inventory the proprietary libraries comprising the Yale Access control system and confirm whether any of the baseline libraries are included within ASSA ABLOY's U.S. or Canadian products.

R. At the option of Acquirer, Acquirer may purchase all of ASSA ABLOY's inventory as of the Divestiture Date that is branded Yale in the residential mechanical space, subject to the terms and conditions of the supply agreement in Paragraph VI.J, but without restriction on how or where it is sold to residential or, solely with respect to such inventory, Multifamily customers.

VII. FINANCING

Defendants may not finance all or any part of Acquirer's purchase of all or part of the Divestiture Assets.

VIII. ASSET PRESERVATION

Defendants must take all steps necessary to comply with their respective obligations under the Asset Preservation Stipulation and Order entered by the Court.

IX. AFFIDAVITS

A. Within 20 calendar days of the entry of the Asset Preservation Stipulation and Order in this matter, and every 30 calendar days thereafter until the divestitures required by this Final Judgment have been completed, ASSA ABLOY must deliver to the United States and the monitoring trustee, if one has been appointed, an affidavit, signed by each the Chief Financial Officer and General Counsel of its Americas division, describing in reasonable detail the fact and manner of ASSA ABLOY's compliance with this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

B. Each affidavit required by Paragraph IX.A. must include: (1) a description of the efforts ASSA ABLOY has taken to complete the sale of any of the Divestiture Assets and to provide required information to Acquirer; and (2) a description of any limitations placed by ASSA ABLOY on information provided to Acquirer. Objection by the United States to information provided by ASSA ABLOY to Acquirer must be made

within 14 calendar days of receipt of the affidavit, except that the United States may object at any time if the information set forth in the affidavit is not true or complete.

C. ASSA ABLOY must keep all records of any efforts made to divest the Divestiture Assets until one year after the Divestiture Date.

D. Within 20 calendar days of entry of the Asset Preservation Stipulation and Order in this matter, ASSA ABLOY must deliver to the United States an affidavit, signed by the Chief Financial Officer and General Counsel of its America's division, that describes in reasonable detail all actions that ASSA ABLOY has taken and all steps that ASSA ABLOY has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

E. If ASSA ABLOY makes any changes to actions and steps described in affidavits provided pursuant to Paragraph IX.D., ASSA ABLOY must, within 15 calendar days after any change is implemented, deliver to the United States an affidavit describing those changes.

F. ASSA ABLOY must keep all records of any efforts made to comply with Section VIII until one year after the Divestiture Date.

X. APPOINTMENT OF MONITORING TRUSTEE

A. Upon application of the United States, which Defendants may not oppose, the Court will appoint a monitoring trustee selected by the United States, after consultation with Defendants, and approved by the Court.

B. The monitoring trustee will have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Asset Preservation Stipulation and Order entered by the Court and will have other powers as the Court deems appropriate. The monitoring trustee will have no responsibility or obligation for operation of the Divestiture Assets.

C. Defendants may not object to actions taken by the monitoring trustee in fulfillment of the monitoring trustee's responsibilities under any Order of the Court on any ground other than malfeasance by the monitoring trustee. Objections by Defendants must be conveyed in writing to the United States and the monitoring trustee within 10 calendar days of the monitoring trustee's action that gives rise to Defendants' objection.

D. The monitoring trustee will serve at the cost and expense of ASSA ABLOY pursuant to a written agreement, on terms and conditions, including confidentiality requirements and conflict of interest certifications, approved by the United States in its sole discretion.

E. The monitoring trustee may hire, at the cost and expense of ASSA ABLOY, any agents and consultants, including investment bankers, attorneys, and accountants, that are reasonably necessary in the monitoring trustee's judgment to assist with the monitoring trustee's duties. These agents or consultants will be solely accountable to the monitoring trustee and will serve on terms and conditions, including confidentiality requirements and conflict-of-interest certifications, approved by the United States in its sole discretion.

F. The compensation of the monitoring trustee and agents or consultants retained by the monitoring trustee must be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. If the monitoring trustee and ASSA ABLOY are unable to reach agreement on the monitoring trustee's compensation or other terms and conditions of engagement within 14 calendar days of the appointment of the monitoring trustee, the United States, in its sole discretion, may take appropriate action, including by making a recommendation to the Court. Within three business days of hiring any agents or consultants, the monitoring trustee must provide written notice of the hiring and the rate of compensation to Defendants and the United States.

G. The monitoring trustee must account for all costs and expenses incurred.

H. ASSA ABLOY and Acquirer must use best efforts to assist the monitoring trustee to monitor Defendants' compliance with their obligations under this Final Judgment and the Asset Preservation Stipulation and Order. Subject to reasonable protection for trade secrets, other confidential research, development, or commercial information, or any applicable privileges, ASSA ABLOY and Acquirer must provide the monitoring trustee and agents or consultants retained by the monitoring trustee with full and complete access to all personnel, books, records, and facilities of the Divestiture Assets. ASSA ABLOY and Acquirer may not take any action to interfere with or to impede accomplishment of the monitoring trustee's responsibilities.

I. The monitoring trustee must investigate and report on ASSA ABLOY's compliance with this Final Judgment, the Asset Preservation Stipulation and Order, and any inter-party agreements between Acquirer and ASSA ABLOY relating to the divestiture, including by investigating and reporting pursuant to Section IV of this Final Judgment and regarding compliance with the terms of this Final Judgment. During any period while any transition services or supply agreements entered into pursuant to Sections V and VI of this Final Judgment are in effect, or any period while a proceeding may be reopened by the United States pursuant to Section IV of this Final Judgment, the monitoring trustee must provide periodic reports to the United States setting forth Defendants' efforts to comply with their obligations under this Final Judgment and under the Asset Preservation Stipulation and Order. The United States, in its sole discretion, will set the frequency of the monitoring trustee's reports.

J. The monitoring trustee will serve until the later of (1) the expiration of the terms of all transition services agreements or supply agreements entered pursuant to Sections V and VI of this Final Judgment or (2) the conclusion of any proceeding reopened by the United States pursuant to Section IV of this Final Judgment, or, if no

such proceeding is reopened prior to the date that is five (5) years from entry of this Final Judgment, five (5) years from entry of this Final Judgment; unless the United States, in its sole discretion, determines a different period is appropriate.

K. If the United States determines that the monitoring trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute.

XI. DISPUTE RESOLUTION

A. ASSA ABLOY and Acquirer will each have the right to initiate an expedited dispute resolution process in the event of a dispute over the extent of either party's rights under this Final Judgment, including whether an application is Multifamily, commercial, or residential and whether the intellectual property rights set forth in Paragraph II.Q.2.vii have been transferred. In any such dispute over whether an application is Multifamily, commercial or residential, ASSA ABLOY will bear the burden of proof and all ambiguities in the agreement with respect to whether an application is Multifamily, commercial or residential will be construed against it; the losing party will pay all expenses. With respect to a dispute under any supply agreement pursuant to Paragraphs V.J, V.K, VI.J, or VI.K of this Final Judgment and until the expiration of the Final Judgment, ASSA ABLOY and Acquirer will each have the right to initiate a one-day binding arbitration to be held within 15 days of notice by either party.

B. This Section XI will not be interpreted to limit or impact the monitoring trustee's responsibilities under Section X.

XII. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment or of related orders such as the Asset Preservation Stipulation and Order or of determining whether this Final Judgment should be modified or vacated, upon written request of an authorized representative of the Assistant Attorney General for the Antitrust

Division, and reasonable notice to Defendants, Defendants must permit, from time to time and subject to legally recognized privileges, authorized representatives, including agents retained by the United States:

1. to have access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, Defendants must submit written reports or respond to written interrogatories, under oath if requested, relating to any matters contained in this Final Judgment.

XIII. NO REACQUISITION

ASSA ABLOY may not reacquire any part of or any interest in the Divestiture Assets during the term of this Final Judgment without prior authorization of the United States.

XIV. PUBLIC DISCLOSURE

A. No information or documents obtained pursuant to any provision of this Final Judgment may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand-jury

proceedings, for the purpose of evaluating the proposed Acquirer or securing compliance with this Final Judgment, or as otherwise required by law.

B. In the event of a request by a third party, pursuant to the Freedom of Information Act, 5 U.S.C. § 552, for disclosure of information obtained pursuant to any provision of this Final Judgment, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 C.F.R. part 16, including the provision on confidential commercial information, at 28 C.F.R. § 16.7. Defendants submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 C.F.R. § 16.7. Designations of confidentiality expire 10 years after submission, "unless the submitter requests and provides justification for a longer designation period." *See* 28 C.F.R. § 16.7(b).

C. If at the time that Defendants furnish information or documents to the United States pursuant to any provision of this Final Judgment, Defendants represent and identify in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," the United States must give Defendants 10 calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

XV. RETENTION OF JURISDICTION

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XVI. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in a civil contempt action, a motion to show cause, or a similar action brought by the United States relating to an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for an extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that effort to enforce this Final Judgment, including in the investigation of the potential violation.

D. For a period of four years following the expiration of this Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the

enforcement action; (2) all appropriate contempt remedies; (3) additional relief needed to ensure the Defendant complies with the terms of this Final Judgment; and (4) fees or expenses as called for by this Section XVI.

XVII. EXPIRATION OF FINAL JUDGMENT

Unless the Court grants an extension, this Final Judgment will expire 10 years from the date of its entry, except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and continuation of this Final Judgment is no longer necessary or in the public interest.

XVIII. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including by making available to the public copies of this Final Judgment and the Competitive Impact Statement, public comments thereon, and any response to comments by the United States. Based upon the record before the Court, which includes the Competitive Impact Statement and, if applicable, any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16]

_____
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff,* v. ASSA ABLOY AB, *et al.*, *Defendants.*	Civil No. 1:22-cv-02791-ACR

COMPETITIVE IMPACT STATEMENT

In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (the "APPA" or "Tunney Act"), the United States of America files this Competitive Impact Statement related to the proposed Final Judgment filed in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On September 8, 2021, Defendants ASSA ABLOY AB ("ASSA ABLOY") and Spectrum Brands Holding, Inc. ("Spectrum") signed an asset and stock purchase agreement under which ASSA ABLOY would acquire Spectrum's Hardware and Home Improvement division for approximately $4.3 billion. The United States filed a civil antitrust Complaint on September 15, 2022, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition may be to substantially lessen competition for the premium mechanical door hardware and smart locks markets in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

The parties vigorously litigated this case for more than seven months and, with the assistance of a mediator, have now reached a proposed settlement. The United States files this Competitive Impact Statement simultaneously with a proposed Final Judgment and an Asset Preservation Stipulation and Order ("Stipulation and Order").

Under the proposed Final Judgment, which is explained more fully below, ASSA ABLOY is required to make certain divestitures to Fortune Brands Innovations, Inc. ("Fortune") or to another entity approved by the United States in its sole discretion. The proposed Final Judgment provides for financial penalties if ASSA ABLOY does not complete the divestiture of assets located outside the United States within a specified period of time. It also provides for appointment of a monitoring trustee to monitor Defendants' compliance with the terms of the proposed Final Judgment, the Stipulation and Order, and any inter-party agreements between ASSA ABLOY and the acquirer that relate to the divestiture. The monitoring trustee will also monitor the acquirer's success in competing in the market for residential smart locks with the assets divested.

Under the terms of the Stipulation and Order, ASSA ABLOY must take certain steps to operate, preserve, and maintain the full economic viability, marketability, and competitiveness of the divested assets until the divestitures ordered in the proposed Final Judgment are complete. The Stipulation and Order requires Defendants to abide by and comply with the provisions of the proposed Final Judgment until it is entered by the Court.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

Complete descriptions of the Defendants and their proposed acquisition are found in the Complaint, filed September 15, 2022. (Dkt. No. 1). ASSA ABLOY is a globally integrated conglomerate that manufactures and sells a wide array of access solutions

products—including residential and commercial door hardware, doors, and electronic access systems. In the United States, ASSA ABLOY competes in the market for premium mechanical door hardware using the Emtek and Schaub brands and in the market for smart locks using the August and Yale brands. ASSA ABLOY had about $3.5 billion in sales in the United States in 2021.

Spectrum's Hardware and Home Improvement division is the largest residential door hardware producer in the United States. Notably, it competes using the widely known Kwikset brand as well as the Baldwin Estate, Baldwin Reserve, and Baldwin Prestige brands. It had about $1.4 billion in sales in the United States in 2021.

On September 8, 2021, ASSA ABLOY agreed to buy Spectrum's Hardware and Home Improvement division for approximately $4.3 billion.

B. The Competitive Effects of the Transaction

Complete descriptions of the potential effects on competition in the markets for both premium mechanical door hardware and for smart locks are found in the Complaint. (Dkt. No. 1). In the markets for smart locks and premium mechanical door hardware, ASSA ABLOY and Spectrum are close competitors and share enormous market shares that render the merger presumptively anticompetitive.

As alleged in the Complaint, the proposed transaction would have threatened competition in at least two separate antitrust markets in the United States: (1) premium mechanical door hardware and (2) smart locks, which are wirelessly connected digital door locks. In the premium mechanical door hardware market, the proposed transaction would be a merger to near-monopoly, where the merged firm would account for around 65% of sales, becoming more than ten times larger than its next-largest competitor. In the market for smart locks, the proposed transaction would cut off competition in a fast-growing door hardware segment, leaving the merged firm with more than a 50% share and only one remaining meaningful competitor—an effective duopoly. In both of these

markets, the proposed transaction easily surpasses the thresholds that trigger a presumptive violation of the Clayton Act.

Historically, competition between Defendants to sell residential door hardware to showrooms, home improvement stores, builders, online retailers, home security companies, and other customers has generated lower prices, higher quality, exciting innovations, and superior customer service. The head-to-head competition between the Defendants is significant. They regularly reduce price to win business from each other and respond to each other's competitive initiatives with innovation and better offerings. For example, one of Spectrum's top "strategic imperatives" in 2021 was to invest heavily in better service and pricing for its premium mechanical door hardware brands (Baldwin Estate and Baldwin Reserve) in order to recapture market share from its "chief competitor," ASSA ABLOY's Emtek brand. Similarly, ASSA ABLOY has recently invested in a new lineup of smart locks designed to "take [a half] bay" (*i.e.*, take shelf space) from Spectrum's Kwikset brand and its other large competitor in major home improvement stores. The proposed transaction would eliminate those benefits altogether.

III. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT AND SUMMARY OF SETTLEMENT RATIONALE

As an alternative to the proposed Final Judgment, the United States considered either (1) proceeding to verdict and continuing to request the Court to enter a permanent injunction blocking the proposed merger between ASSA ABLOY and Spectrum or (2) accepting earlier divestitures that Defendants proposed.

The United States identified several concerns with the divestiture proposals. The divestiture agreement restricted the rights of Fortune to use the Yale brand name to sell products outside of residential smart locks, including important products in the multifamily segment. This would have limited Fortune's incentive to invest in the Yale brand and curtailed its ability to use that brand to compete for customers who sought Yale locks that could be used in all aspects of residential and multifamily buildings. The

supply agreement between ASSA ABLOY and Fortune lacked specific enforcement terms and risked Fortune's ability to supply an important customer base. While the Emtek and Schaub assets ASSA ABLOY proposed to divest represented mostly a separate, ongoing business unit, the disparity between the potential competitive significance of those assets and the Yale branded residential smart lock assets would have increased incentives for tacit coordination between the post-merger ASSA ABLOY and Fortune. Finally, the divestiture, as initially proposed, included a lengthy period of transition and entanglement in which ASSA ABLOY and Fortune would have shared—for an indefinite period—an important smart locks manufacturing facility in Vietnam.

Under the guidance of a mediator, a settlement was reached, ultimately culminating in the proposed Final Judgment described below.

This proposed Final Judgment provides greater relief than earlier offers by the Defendants. In particular, the proposed Final Judgment:

- Expands the scope of the Yale-related intellectual property to be divested to Fortune or an alternative acquirer. This includes the unrestricted right to use the Yale brand in the United States and Canada for any smart locks used in single- and multi-family residences, the right to use the Yale brand for mechanical residential products, as well as an irrevocable license to the Yale Access software platform for associated end uses in the United States and Canada. It also includes rights to the Interconnect and nexTouch brands, which are important to the multifamily segment. These provisions will improve Fortune's or an alternative acquirer's incentives to invest in the divested brands and

preserves the acquirer's ability to use those brands to compete against ASSA ABLOY in the future, including in ways and with products not contemplated today.

- Mandates a shortened transition period for entanglements between ASSA ABLOY and the acquirer and subjects ASSA ABLOY to significant daily penalties if it fails to transfer certain smart lock assets located in Vietnam by December 31, 2023.
- Appoints a monitoring trustee to (1) ensure ASSA ABLOY's compliance with the terms of the proposed Final Judgment, the Stipulation and Order, and any inter-party agreements between ASSA ABLOY and the acquirer relating to the divestiture and (2) determine, for a period of up to five years after the entry of the Final Judgment, whether Fortune or an alternative acquirer has replicated the competitive intensity in the residential smart locks business that was lost as a result of ASSA ABLOY's acquisition of Spectrum's Hardware and Home Improvement division and, if not, whether the diminishment in competitive intensity is in material part due to limitations on the acquirer's right to use the Yale brand name or trademarks in the United States and Canada.
- If the monitoring trustee makes such a determination, the monitoring trustee may, after consultation with the United States, provide a written report of that determination to the United States, after which the United States may seek leave of the Court to reopen this proceeding and seek divestiture of additional brand or trademark rights.

The United States does not contend that the relief obtained by the proposed Final Judgment will fully eliminate the risks to competition alleged in the Complaint. The United States respectfully submits that only a complete injunction preventing the original proposed merger would have eliminated those risks. Alternatively, complete divestitures of all relevant standalone business units necessary to fully compete may have diminished those risks significantly. Based on the totality of circumstances and risks associated with this litigation, however, the United States has agreed to the proposed Final Judgment, which includes additional provisions and protections to address some of the concerns

identified above. The United States believes the Court will conclude the proposed Final Judgment is in the public interest under the Tunney Act.

IV. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment includes the following terms:

A. Divested Assets

The proposed Final Judgment requires ASSA ABLOY to divest to Fortune, or to another acquirer approved by the United States in its sole discretion, what the proposed Final Judgment defines as the "Premium Mechanical Divestiture Assets," which include, at the option of the acquirer, all of ASSA ABLOY's rights, titles, and interests in and to all property and assets, tangible and intangible, wherever located, relating to or used in connection with the "Premium Mechanical Divestiture Business," which consists of ASSA ABLOY's Emtek and Schaub branded businesses. For example, as further detailed in the proposed Final Judgment, the Premium Mechanical Divestiture Assets include a facility in California, as well as machinery, equipment, contracts, licenses, permits, and intellectual property. This intellectual property includes the right to exclusive and unlimited worldwide use, in all sales channels, of the Emtek brand names and trademarks and Schaub brand name and trademarks. Pursuant to Paragraph V.D of the proposed Final Judgment, unless the United States otherwise consents in writing, the divestiture must include the entire Premium Mechanical Divestiture Assets.

The proposed Final Judgment also requires ASSA ABLOY to divest to Fortune, or to another acquirer approved by the United States in its sole discretion, the "Smart Lock Divestiture Assets," which includes, at the option of the acquirer, all of ASSA ABLOY's rights, titles, and interests in and to all property and assets, tangible and intangible, wherever located, relating to or used in connection with the "Smart Lock Divestiture Business." As defined in the proposed Final Judgment, the Smart Lock Divestiture Business consists of (1) the August branded business and (2) the Yale

branded multifamily and residential smart lock businesses in the United States and Canada (including Yale Real Living), but does not include (i) the Yale branded commercial business anywhere in the world or (ii) all other Yale branded businesses anywhere in the world. As further detailed in the proposed Final Judgment, the Smart Lock Divestiture Assets include machinery, equipment, contracts, licenses, permits, and intellectual property. This intellectual property includes the right to the Yale brand name and trademarks for uses in the United States and Canada, as well as a license to the Yale Access software platform for use in the United States in Canada. The Smart Lock Divestiture Assets also include a facility in Vietnam. Pursuant to Paragraph VI.D of the proposed Final Judgment, unless the United States consents in writing, the divestiture must include all Smart Lock Divestiture Assets.

Paragraph VI.P of the proposed Final Judgment further provides that, if at any time after the divestiture of the Smart Lock Divestiture assets, the acquirer notifies ASSA ABLOY in writing of any patents that (1) are owned by ASSA ABLOY as of the divestiture date, (2) are not licensed or otherwise transferred to the acquirer pursuant to the proposed Final Judgment, and (3) were contemplated by ASSA ABLOY to be used in the Smart Lock Divestiture Business prior to the divestiture date, as set forth in the Product Development Roadmap attached to the Stock Purchase Agreement, then those patents will automatically be deemed as licensed to the acquirer under the terms of the proposed Final Judgment.

Paragraph VI.Q of the proposed Final Judgment provides that, for five years after the divestiture of the Smart Lock Divestiture Assets, the acquirer has the right to annually request and receive a code base assessment of the Yale Access control system to inventory the proprietary libraries comprising the Yale Access control system and

confirm whether any of the baseline libraries are included within ASSA ABLOY's United States or Canadian products.

Paragraph VI.R of the proposed Final Judgment provides the acquirer the option to purchase all of ASSA ABLOY's Yale branded inventory, as of the divestiture date, relating to the residential mechanical space. This purchase is subject to the terms of any supply agreement(s) entered into pursuant to the proposed Final Judgment, but does not restrict the acquirer on where or how it sells such inventory to residential or multifamily customers.

Paragraph VI.N of the proposed Final Judgment provides ASSA ABLOY the right to use the Yale brand name in the United States and Canada. It provides for a twelve-month wind-down period during which ASSA ABLOY can continue to use the Yale brand name for commercial products, including in some limited circumstances associated with the Yale Accentra platform and sold to multifamily residences. In addition, ASSA ABLOY is permitted to continue to use the Yale brand name for commercial products to fulfill specifications or quotes issued prior to the divestiture.

B. Relevant Personnel

The proposed Final Judgment contains provisions intended to facilitate the acquirer's efforts to hire certain employees. Specifically, Paragraphs V.G and VI.G of the proposed Final Judgment require ASSA ABLOY, at the option of the acquirer, to provide the acquirer and the United States with organization charts and information relating to these employees and to make them available for interviews. It also provides that ASSA ABLOY must not interfere with any negotiations by the acquirer to hire these employees. In addition, for employees who elect employment with the acquirer, ASSA ABLOY must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, provide any pay pro rata, provide all compensation and benefits that those employees have fully or partially accrued, and provide all other benefits that the

employees would generally be provided had those employees continued employment with ASSA ABLOY, including but not limited to any retention bonuses or payments.

C. Transitional Services Agreement

The proposed Final Judgment requires ASSA ABLOY to provide transition services to maintain the viability and competitiveness of the Premium Mechanical Divestiture Business and the Smart Lock Divestiture Business in the period following the divestitures. Specifically, Paragraphs V.L and VI.L of the proposed Final Judgment require ASSA ABLOY, at the acquirer's option, to enter into transition services agreements for all services necessary to operate the Premium Mechanical Divestiture Business and Smart Lock Divestiture Business—e.g., back office, human resources, accounting, employee health and safety, and information technology services and support—for a period of up to 12 months. Paragraph VI.L of the proposed Final Judgment also requires that the applicable transition services agreement cover all services necessary to operate the manufacturing facility located at Lot A10, Ba Thien II IP, Thien Ke, Binh Xuyen, Vinh Phuc, Vietnam for a period of up to 12 months. The acquirer may terminate the transition services agreements, or any portion of them, without cost or penalty, other than payment of any amounts due thereunder, at any time upon 15 calendar days' written notice. The United States, in its sole discretion, may approve one or more extensions of any transition services agreement for a total of up to an additional 12 months and any amendments to or modifications of any provisions of a transition services agreement are subject to approval by the United States, in its sole discretion. Employees of ASSA ABLOY tasked with supporting these transition services agreements must not

share any of Fortune's or another acquirer's competitively sensitive information with any other employee of ASSA ABLOY.

D. Supply Agreements

Paragraphs V.J and VI.J of the proposed Final Judgment require ASSA ABLOY, at the acquirer's option, to enter into a supply contract or contracts for all products necessary to operate the Premium Mechanical Divestiture Business and the Smart Lock Divestiture Business, including nexTouch and Interconnect branded products produced by ASSA ABLOY prior to the divestiture date, for a period of up to twelve months. The acquirer may terminate a supply contract, or any portion of it, without cost or penalty, other than payment of any amounts due thereunder, at any time upon 15 calendar days' written notice. The United States, in its sole discretion, may approve up to two extensions of any supply contract for a period of 12 months each, and any amendments to or modifications of any provisions of a supply contract are subject to approval by the United States, in its sole discretion. This will help to ensure that Fortune will not face disruption to its supply during an important transitional period. Employees of ASSA ABLOY tasked with supporting these supply contracts must not share any of Fortune's or another acquirer's competitively sensitive information with any other employee of ASSA ABLOY.

E. Monitoring Trustee

The proposed Final Judgment provides for the appointment of a monitoring trustee to examine Defendants' compliance with the terms of the proposed Final Judgment, the Stipulation and Order, and any agreements between ASSA ABLOY and the acquirer relating to the divestiture. The monitoring trustee will also monitor Fortune's competitive intensity in the residential smart locks market relative to ASSA ABLOY's pre-divestiture competitive intensity and, for a period of up to five years after entry of the Final Judgment, may report to the United States if that competitive intensity has

diminished in material part due to limitations on the acquirer's right to use the Yale brand name or trademarks in the United States and Canada. Upon receipt of such a report, the United States, in its sole discretion, will have the ability to seek leave of the Court to reopen this proceeding to seek additional relief.

The monitoring trustee will not have any responsibility or obligation for the operation of the Premium Mechanical Divestiture Assets or Smart Lock Divesture Assets. The monitoring trustee will serve at Defendants' expense, on such terms and conditions as the United States approves, in its sole discretion, and Defendants must assist the monitoring trustee in fulfilling his or her obligations. The monitoring trustee will provide periodic reports to the United States and will serve until the later of (1) the expiration of all transition services agreements or supply agreements entered pursuant to the proposed Final Judgment or (2) conclusion of any reopening of this proceeding by the United States, as provided for by the proposed Final Judgment, or if no such proceeding is reopened within five years of the entry of the Final Judgment, five years from the entry of the Final Judgment. The United States, in its sole discretion, may determine a different period of time is appropriate for the monitor's term.

F. Penalty for Noncompliance

The proposed Final Judgment requires that ASSA ABLOY use best efforts to complete the divestiture of Smart Lock Divestiture Assets as quickly as possible, including the transfer of overseas assets in Vietnam, to the acquirer. To incentivize ASSA ABLOY to effectuate this transfer as expeditiously as possible, after December 31, 2023, the proposed Final Judgment requires ASSA ABLOY to pay to the United States $50,120 per day until the overseas assets have been transferred. Such payments will not be due, however, if ASSA ABLOY can demonstrate to the United States, after consultation with the monitoring trustee, that (1) the transfer was delayed due to a force majeure event or (2) operational control of the overseas assets has otherwise been given to the acquirer. In

the event ASSA ABLOY relies on such operational control provision, ASSA ABLOY shall confer with the United States to reach agreement on this, and if the parties are unable to reach an agreement, ASSA ABLOY may ask the Court to resolve this issue.

G. Dispute Resolution

Paragraph XI.A of the proposed Final Judgment provides that ASSA ABLOY and the acquirer will each have the right to initiate an expedited dispute resolution process in the event of a dispute over the extent of either party's rights under the proposed Final Judgment. This provision does not apply to disputes between ASSA ABLOY and the United States.

H. Other Provisions

Paragraphs V.E. and VI.E of the proposed Final Judgment outline procedures to follow if ASSA ABLOY attempts to divest the Premium Mechanical Divestiture Assets or the Smart Lock Divestiture Assets to an acquirer other than Fortune, including what information should be made available to prospective acquirers. ASSA ABLOY is required to inform any such prospective acquirers that the assets are being divested in accordance with the proposed Final Judgment, and to provide to any prospective acquirer a copy of the proposed Final Judgment.

The proposed Final Judgment also contains provisions designed to promote compliance with and make enforcement of the Final Judgment as effective as possible. Paragraph XVI.A provides that the United States retains and reserves all rights to enforce the Final Judgment, including the right to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of

proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense that the Final Judgment addresses.

Pursuant to Paragraph XVI.B of the proposed Final Judgment, Defendants agree that they will abide by the proposed Final Judgment and that they may be held in contempt of the Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail.

Paragraph XVI.C of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that a Defendant has violated the Final Judgment, the United States may apply to the Court for an extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XVI.C of the proposed Final Judgment provides that, in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, the Defendant must reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with that effort to enforce this Final Judgment, including the investigation of the potential violation.

Paragraph XVI.D of the proposed Final Judgment states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for

four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XVII of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and continuation of the Final Judgment is no longer necessary or in the public interest.

V. REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

VI. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive

Impact Statement in the *Federal Register*, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, the comments and the United States' responses will be published in the *Federal Register* unless the Court agrees that the United States instead may publish them on the U.S. Department of Justice, Antitrust Division's internet website.

Written comments should be submitted in English to:

Chief, Defense, Industrials, and Aerospace Section
Antitrust Division
United States Department of Justice
450 Fifth St. NW, Suite 8300
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

Under the Clayton Act and APPA, proposed Final Judgments, or "consent decrees," in antitrust cases brought by the United States are subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a proposed Final Judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable").

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's Complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not "make de novo determination of facts and issues." *United States v. W. Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead, "[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first

instance, to the discretion of the Attorney General." *W. Elec. Co.*, 993 F.2d at 1577 (quotation marks omitted). "The court should also bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is the one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest." *Microsoft*, 56 F.3d at 1460 (quotation marks omitted); *see also United States v. Deutsche Telekom AG*, No. 19-2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would "have enormous practical consequences for the government's ability to negotiate future settlements," contrary to congressional intent. *Microsoft*, 56 F.3d at 1456. "The Tunney Act was not intended to create a disincentive to the use of the consent decree." *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g.*, *Microsoft*, 56 F.3d at 1461 (recognizing courts should give "due respect to the Justice Department's . . . view of the nature of its case"); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) ("In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." (internal citations omitted)); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting "the deferential review to which the government's proposed remedy is accorded"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) ("A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case."). The ultimate question is whether "the remedies [obtained by the Final Judgment

are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft*, 56 F.3d at 1461 (*quoting W. Elec. Co*., 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement, Pub. L. 108-237 § 221, and added the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect

of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). "A court can make its public interest determination based on the competitive impact statement and response to public comments alone." *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *Enova Corp.*, 107 F. Supp. 2d at 17).

VIII. DETERMINATIVE DOCUMENTS

In formulating the proposed Final Judgment, the United States considered documents relating to ASSA ABLOY's proposed divestiture to Fortune Brands. Because these documents were determinative in formulating the proposed Final Judgment, copies are attached to the Stipulation and Order to comply with 15 U.S.C. § 16(b).

Dated: May 5, 2023

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

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